FEDERAL BUREAU OF INVESTIGATION

FREEDOM OF INFORMATION/PRIVACY ACTS SECTION

SUBJECT: FRANK COSTELLO

FILE NUMBER: 92-2869 SECTION 8

OFFICE MEMORANDUM . UNITED STATES GOVERNMENT

TO: DIRECTOR, FBI (92-2869) DATE: 8/28/58

FROM: SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was:
Francisco Castaglia, Frank
Castello, Francesco Castiglia,
Francesco Castiglio, Francisco
Cataglia, Francesco Costaglia,
Murray H. Hoffman, Frank Sampson,
Francesco Saverio, Frank Saverio,
Frank Stello
ANTI-RACKETEERING

[redacted] b7C

Enclosed herewith are two copies of the report of SA [redacted] dated and captioned as above.

b7C

REFERENCES

Savannah letter to NY, 5/14/58
Chicago letter to NY, 5/14/58
Cleveland radiogram to Bureau, 5/20/58
NY letter to Bureau, 5/21/58
Los Angeles letter to NY, 5/26/58
WFO letter to NY, 5/26/58

[redacted] b7C

2 - Bureau (92-2869) (Encls. 2)
1 - Boston (92-136)
1 - Butte
1 - Indianapolis (Info)
1 - Los Angeles (92-118)
2 - Miami (92-113)
1 - Newark (92-413)
2 - New Orleans (92-41)
1 - Oklahoma City (92-107)
1 - Salt Lake City (92-263) (Info)
1 - San Francisco (92-53)
4 - New York (92-649)

REC-12 92-2869-59

4 SEP 2 1958

[redacted] b7C

(18) 2 ENCLOSURES REC-12 EX-139 EX-139

[redacted] b7C [redacted] b7C

67 SEP 9 1958

NY 92-649

REFERENCES (CONT'D)

Newark letter to NY, 5/28/58.
NY airtel to Bureau, 5/28/58
New Orleans letter to NY, 5/31/58
NY airtel to Bureau, 6/4/58
NY letter to Bureau, 6/6/58, with enclosed
b7C report of SA [redacted] 6/6/58, NY
Philadelphia letter to NY, 6/10/58
San Francisco letter to NY, 6/10/58
Savannah letter to NY, 6/12/58
Boston letter to NY, 6/18/58
Dallas letter to NY, 6/18/58
NY airtel to Bureau, 6/23/58
Kansas City letter to NY, 6/24/58
NY letter to San Francisco, 6/25/58
NY letter to Bureau, 6/25/58, with enclosed
b7C report of SA [redacted] 6/25/58, NY.
NY letter to Bureau, 6/27/58
NY letter to Bureau, 6/27/58
Boston letter to NY, 6/27/58
Salt Lake City airtel to Los Angeles, 6/28/58
Oklahoma City letter to NY, 6/30/58
Miami letter to NY, 6/30/58
Jacksonville letter to NY, 6/30/58
Salt Lake City airtel to NY, 7/1/58
Miami airtel to NY, 7/7/58
Memphis airtel to NY, 7/8/58
Philadelphia letter to NY, 7/9/58
Buffalo letter to NY, 7/10/58
New Orleans letter to NY, 7/14/58
Legat, London, England, letter to Bureau, 7/14/58
NY airtel to Bureau, 7/17/58
WFO letter to NY, 7/17/58
El Paso letter to NY, 7/18/58
Newark letter to NY, 7/21/58
NY airtel to Bureau, 7/23/58
Los Angeles letter to Bureau, 7/28/58, with
enclosed report of SA [redacted] 7/28/58, Los
Angeles.

b7C

REFERENCES (CONT'D)

Kansas City letter to Bureau, 7/29/58, with enclosed report of SA [redacted] 7/29/58, Kansas City. b7C
NY letter to Bureau, 7/31/58
Miami letter to NY, 8/1/58
Dallas letter to NY, 8/1/58
NY letter to Memphis, 8/1/58
Chicago letter to Bureau, 8/5/58, with enclosed report of SA [redacted] 8/5/58, Chicago.

ADMINISTRATIVE b7C

Due to the bulkiness of this report, only one copy has been designated for most offices rather than the two copies usually designated.

It is noted that the investigative period in enclosed report is slightly in excess of 90 days. [redacted] b7D results of other investigation conducted were not received in time for inclusion in last report, but is included in instant report.

One copy of this report has been designated for each of the Indianapolis and Salt Lake City Offices for informational purposes inasmuch as these offices may be requested, in the future, to conduct investigation or additional investigation in this case.

For the information of the Butte and Indianapolis Offices, which offices have not previously received a copy of a NY report in instant matter, the following is noted concerning subject:

Subject naturalized as US citizen 9/10/25, NYC, and denaturalization proceedings instituted in 1952. He has admitted he was a bootlegger prior to 1926 or 1927; he operated slot machines in NYC, from 1928, to 1933; became a betting commissioner in NYC, as he termed it; and he received $60,000 from 1946, to 1949, for assisting in getting bookmakers out of Roosevelt Raceway, Westbury, NY. Subject has admitted

he helped to secure Democratic nomination as Justice of NY Supreme Court in 1943, for THOMAS A. AURELIO; and at one time, had various friends who were in politics. Formerly reported that subject was the gang overlord of all crime and rackets in NYC, who would sit in judgment over all questions of jurisdiction between gangs and any dissension which might arise among the gangs. Subject reported to be of average intelligence and rather retarded educationally, testing at the fourth grade level.

b7D [redacted]

For your additional information, the following is a description of subject:

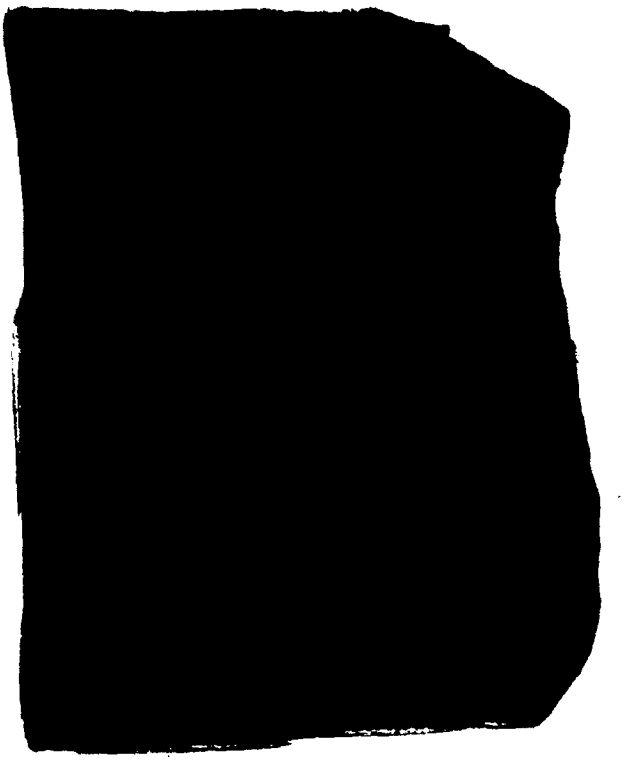
Name	FRANK COSTELLO
Aliases	Francisco Castaglia Frank Castello Francesco Castiglia (true name) Francesco Castiglio Francisco Cataglia Francesco Costaglia Murray H. Hoffman Frank Sampson Francesco Saverio Frank Saverio Frank Stello
Race	White
Date of Birth	February 18, 1891 Cassano Ionico, Cosenza, Italy
Height	5'7½" - 5'8"
Weight	165 to 170 pounds

Hair	Dark chestnut, graying, receding forehead and along sides combs hair straight back
Eyes	Brown
Complexion	Dark
Scars and Marks	Two moles right chin Scar right temple
Build	Heavy
Characteristics	Has large nose, neatly dressed, has been observed wearing black horn-rimmed glasses, possibly slightly hard of hearing, suffers from chronic laryngitis, disability to right big toe, right foot, may wear special shoes, wears a hat, raspy voice
Address	115 Central Park West, New York City, Apartment 18F. Subject has summer residence at 5 Barkers Point Road, Sands Point, Long Island, NY, a 12-room, red brick house with white clapborad wings
Former addresses	24 West 117th Street, NYC 9/23/44 222 East 108th St., NYC 3/12/15 234 East 108th St., NYC 3/26/23 405 Lexington Ave., NYC 1925 Graystone Hotel, NYC January, 1927 585 West End Ave., NYC 1927 to 1930

Former addresses (Cont'd)	65 Central Park West, NYC 1930 to 1937 241 Central Park West, NYC 1931 to 1937
Telephone number	TR 4-2325 PO rt Washington 7-5494
Occupation	Subject has no known place of regular employment. Subject has stated he was a retired real estate man and on other times, has stated he was "retired"
Social Security #	Not known
Religion	Catholic
Principal attorney	GEORGE WOLF, 509 Madison Ave. New York City
[redacted]	b7D
FBI #	936217
Relatives	LUIGI CASTIGLIA, father, died in 1922 MARIA ALOISE CASTIGLIA, mother, died in 1940 LORETTA B. COSTELLO, wife, same address as subject EDWARD COSTELLO, brother, age approximately 72, 21-40 21st St., Astoria, NY MAY COSTELLO MARCELINA (GILBIRDIE), sister, age approximately 64, address not known, New Orleans, La. SADIE COSTELLO, sister, died in 1936 [redacted] b7C CONCETTA COSTELLO, sister, died in 1944

Relatives
(Cont'd)

b7c



The lead set out for the NYO to conduct inquiry at 115 Central Park West, the place of subject's residence, is being held in abeyance at this time pending further records review in the matter as to whether the apartments at this address are now cooperative apartments.

LEADS

BOSTON

At Boston, Massachusetts

Will report results of investigation as set out in referenced Chicago letter to Bureau, 8/5/58.

LEADS (CONT'D)

BUTTE

At Butte, Montana

Will report results of investigation as set out in referenced Los Angeles report.

LOS ANGELES

At Los Angeles, California

Will report results of investigation currently being conducted within your Division.

MIAMI

At Miami, Florida

Will report results of investigation currently being conducted within your Division.

NEWARK

b7C

Will ascertain whether [redacted] is identical to or related to subject.

NEW ORLEANS

At New Orleans, Louisiana

1. Will report results of investigation as set out in the last 2 leads of NY report 3/6/58 concerning relatives of subject.

LEADS (CONT'D)

At New Orleans, Louisiana (Cont'd)

2. Will report results of recontact with [redacted] as set out in referenced letter,

b7C, D

OKLAHOMA CITY

At Tulsa, Oklahoma

b7D Will report results of investigation at [redacted] as set out in Kansas City letter to Bureau, 7/29/58.

SAN FRANCISCO

At San Francisco, California

b7D [redacted]

NEW YORK

At New York, New York

b7C b7D [redacted]

LEADS (CONT'D)

At New York, New York (Cont'd)

3. Will conduct appropriate inquiry at the following business establishments in an effort to ascertain whether subject has or did have a financial interest in these business firms:

67D [redacted]

67D 4. Will conduct inquiry at [redacted], in an effort to ascertain whether subject has or did have a financial interest in this company.

5. Will check Records of Incorporation, County Clerk's Office, for any record as to the incorporation of the business enterprises Jet Broiler Company and Realty Trading Company.

67D 6. Will conduct inquiry at [redacted] for any information relating to [redacted]

7. Will check records of the Supreme Court, NYC, in an effort to locate the proceedings reportedly instituted by the Majestic Tenants Protective Committee against NY Majestic Corporation as relating to the building located at 115 Central Park West.

8. Will report results of criminal check requested concerning [redacted]

67C

LEADS (CONT'D)

At New York, New York (Cont'd)

9. Will interview [redacted], for any information relating to subject. b7C, D

[redacted] b7C, D2

11. Will attempt to verify the birth of Mrs. LORETTA B. COSTELLO as having been born in NYC on 10/28/98.

12. Will ascertain background information concerning [redacted] b7C

13. Will report results of credit check requested on [redacted] b7C

14. Will check records at Hall of Records, 131 Chamber St., in an effort to locate the record of naturalization for [redacted] who reportedly was naturalized in the US District Court, NYC, [redacted] b7C

15. Will make further efforts to verify birth of [redacted] reportedly born [redacted]

16. Will conduct credit, criminal and motor vehicle bureau investigation concerning the following individuals:

LEADS (CONT'D)

At New York, New York (Cont'd)

[redacted] b7c

b7c, D

20. Will report results of inquiry made to the US Treasury Department, Chicago, Illinois, as to whether subject or his wife own any US savings bonds.

21. Will report results of investigation requested to be conducted in Havana, Cuba, relating to subject.

LEADS (CONT'D)

At New York, New York (Cont'd)

22. Will conduct spot checks of subject in an effort to observe subject.

23. Will report results of informant contacts.

24. Will, during the course of this investigation, be alert for additional information as to the alleged "criminal combination" and any information which might connect subject with this combination.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO WORKHOUSE NYC, FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

4-750 (Rev. 12-14-88)

XXXXXX
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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

3 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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☐ Information pertained only to a third party. Your name is listed in the title only.

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_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

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_____

☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:

92 · 2869 · 60

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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FBI/DOJ

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869) DATE: 9/3/58

FROM: [redacted] SAC, OKLAHOMA CITY (92-107) b7C

SUBJECT: FRANK COSTELLO, Was.
ANTI-RACKETEERING
OO:NY

[redacted] Enclosed herewith are two copies of report of SA [redacted] at Oklahoma City dated 9/3/58. b7C

b7C

REFERENCE b7C

Report of SA [redacted] at Kansas City dated July 29, 1958.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO WORKHOUSE NYC, FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

[redacted] b7C

[redacted] b7C

[redacted] b7C

EX-138

REC-65

ENCLOSURE

(2) - Bureau (Enc. 2)
2 - New York (92-649)(Enc. 2)
1 - Oklahoma City

[redacted] b7C
(5)

92-2869-61

REC-65

16 SEP 8 1958

EX-138

[redacted] b7C

[redacted] b7C

63 SEP 15 1958

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869) DATE: 9/9/58

b7C FROM : SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was,
AR

For the information of the Bureau, Federal Judge JOHN W. CLANCY, USDC, SDNY, on 9/8/58, acted upon a motion by the US Government to have it's denaturalization case against the subject given preference on the trial calendar. Judge CLANCY set 12/1/58, for assigning the case to trial.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO WORKHOUSE NYC, FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

(2)-Bureau (92-2869)
1-New York (92-649)

[redacted] b7C
(3)

[redacted] b7C

REC-1 92-2869-62

EX-128

SEP 12 1958

[redacted] b7C

SEP 17 1958

[redacted] b7C

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

b7C

TO : DIRECTOR, FBI (92-2869) DATE: 10/1/58

b7C

FROM : [redacted] SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was,
AR

For the information of the Bureau, the Appellate Division of Supreme Court on 9/30/58, upheld a 30-day contempt of court sentence imposed on subject in General Sessions Court, NYC, for refusing to answer Grand Jury questions concerning the attempt on his life on 5/2/57, after having been offered immunity from prosecution.

Specifically, subject was adjudged in contempt for refusing to explain the meaning of a slip bearing the notation "Gross Casino Wins 4/26/57, $651,284," which was found in his clothing at the time of the shooting.

MORRIS SHILENSKY, subject's lawyer, indicated that the Appellate Division ruling probably would be appealed to the State Court of Appeals.

It is noted that subject served 15 days of the sentence before his release from NYC Penitentiary, Rikers Island, NY, on 5/22/57, in $1,000 bail pending appeal.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO WORKHOUSE NYC, FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

[redacted] b7C

2-Bureau (92-2869)
1-New York (92-649)

[redacted] b7C
(3)

REC- 23 92-2869-63

25 OCT 2 1958

OCT 3 5 20 PM '58

1081

[redacted] b7C

AM 5

50 OCT 8 1958

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869) DATE: 10/14/58

b7c

FROM : [redacted] SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was,
AR

For the information of the Bureau, the US Supreme Court on 10/13/58, for the [redacted] time, refused to consider subject's 1954 conviction for income tax evasion. He has been free in $25,000 bail pending a series of appeals.

Acting USA, SDNY ARTHUR H. CHRISTY, announced on 10/13/58, that the government will move for the immediate surrender of subject.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO THE NYC WORKHOUSE FOR ONE YEAR FOR POSSESSION OF A REVOLVER, AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

2-Bureau (92-2869)
1-New York (92-649)

[redacted]

b7c [redacted]

92-2869-64

13 OCT 15 1958

EX-135

REC-61

OCT 14 3 15 PM '58

59 OCT 20 1958

[redacted]

b7c

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869) DATE: 10/17/58

FROM : SAC, NEW YORK (92-649)

b7c [redacted]

SUBJECT: FRANK COSTELLO, was,
AR

For the information of the Bureau, subject has been ordered to surrender Federal Court, SDNY, on Tuesday, 10/21/58, to resume serving his five-year sentence for evasion of income taxes.

It is noted that he was convicted in 1954, and was sentenced to five years and fined $20,000. He served eleven months of the sentence and was released from custody in March of 1957, in $25,000 bail pending appeal of the conviction. It is further noted that on 10/13/58, the US Supreme Court turned down a final move for a review of the case.

INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15, TO THE NYC WORKHOUSE FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, THE SUBJECT SHOULD BE CONSIDERED DANGEROUS.

[redacted]

(3) b7c

b7c [redacted]

92-2869-65

REC-51

23 OCT 20 1958

EX-128

b7c [redacted]

OCT 23 1958

FD-36 (Rev. 12-13-56)

FBI

Date: 10/21/58

Transmit the following in PLAIN
(Type in plain text or code)

Via AIRTEL
(Priority or Method of Mailing)

TO : DIRECTOR, FBI (92-2869)

FROM : SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was.
AR

Motions by Attorney MORRIS SHILENSKY in behalf of subject denied this AM by USDJ JOHN F. X. McGOHEY, SDNY, and subject surrendered to custody of USM, SDNY, this AM to resume serving sentence for 1954 conviction for evasion of income taxes.

Chicago, Indianapolis, Los Angeles, Newark, and Salt Lake City discontinue.

NY will submit closing report UACB.

[redacted] SUCH AS SUBJECT WAS SENTENCED ON 4/15/15 TO [redacted] ONE YEAR FOR POSSESSION OF A REVOLVER AND [redacted] DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

FOSTER

3-Bureau (92-2869)
1-Chicago (92-369) (Info.)
1-Indianapolis (Info.)
1-Los Angeles (92-118) (Info.)
1-Newark (92-413) (Info.)
1-Salt Lake City (92-263) (Info.)
1-New York (92-649)

92-2869-66

REC-32

EX-133

24 OCT 22 1958

[redacted]

(10)

52 OCT 27 [redacted]

Approved: [redacted] Sent _____ M Per _____

[redacted] ent in Charge

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
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Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☒ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☒ (b)(7)(C)	☐ (k)(1)
_____	☒ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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☐ ined only to a third party. Your name is listed in the title only.

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☒ The following number is to be used for reference regarding these pages:
92-2869-67

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X FOR THIS PAGE X
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FBI/DOJ

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869) DATE: 10/28/58

FROM : SAC, LOS ANGELES (92-118)

SUBJECT: FRANK COSTELLO, was.-
ANTI-RACKETEERING
OO:New York

Enclosed herewith are two copies of the report of SA [redacted] dated as above at Los Angeles.

67C

REFERENCES

67C

Report of SA [redacted] dated 6/6/58 at New York City.

Report of SA [redacted] dated 8/5/58 at Chicago.

Salt Lake City airtel to Los Angeles dated 6/28/58.
Los Angeles airtel to Chicago dated 10/3/58.

ADMINISTRATIVE

[redacted]

67D
67C

LEADS

[redacted]

67C,
D

ENCLOSURE

REC- 23 EX- 132

(2)- Bureau (Encls-2)

REC- 23 92-2869-68

2 - New York (92-649) (Encls-2)

EX- 132 NOV 4 1958

[redacted]

(8) 67C

[redacted] 67C

57 NOV 10 1958 f90

LA 92-118

[redacted]

b7C, D

It is noted, according to COSTELLO, that he had oil interests at one time with [redacted]

b7C

SUBJECT SHOULD BE CONSIDERED DANGEROUS INASMUCH AS HE WAS SENTENCED ON APRIL 15, 1915 TO THE WORK HOUSE, NEW YORK CITY, FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND BECAUSE OF HIS REPORTED ASSOCIATION WITH HOODLUMS.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (92-2869)

FROM : SAC, LOS ANGELES (92-118)

DATE: 11/5/58

SUBJECT: FRANK COSTELLO, was.
ANTI-RACKETEERING
OO: New York

b7C

Re report of SA [redacted] dated 10/28/58 at Los Angeles wherein a lead was set out [redacted]

b7C

b7C

In view of New York City airtel to the Director dated 10/21/58 [redacted] advised they would submit a closing report UACB, the Los [redacted] ll not cover the above leads. This case is considered RUC.

where[redacted]
Ar[redacted]

EX.-132

REC-83 92-2869-69

NOV 10 1958

(2) - Bureau
2 - New York (92-649)
1 [redacted] (92-369) (Info)
1 - Los Angeles

[redacted] b7C

(6)

[redacted]

NOV 13 1 00 PM '58

INVESTIGA[redacted]
REC.D [redacted] b7C

b7C

Report Form
FD-263 (Rev. 5-12-55)

FEDERAL BUREAU OF INVESTIGATION

[redacted] b7C

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	11/10/58	8/19-21,26-29;9/1-5,7-12,15-17,23,25,26;10/1-3,6-10,13-17,20,21,24,27/58

TITLE OF CASE

FRANK COSTELLO, was.

REPORT MADE BY [redacted] TYPED BY

CHARACTER OF CASE

ANTI-RACKETEERING

b7C

SYNOPSIS:

Subject and wife continue to maintain a residence at the Majestic Apartments, 115 Central Park West, NYC. No employment developed for subject. Information relating to relatives, acquaintances, or associates of subject set forth. The Appellate Division of NY State Supreme Court, on 9/30/58, upheld 30 day contempt of court sentence imposed on subject. The denaturalization trial of subject scheduled for 12/1/58, in USDC, SDNY. US Supreme Court, for fourth time, refused on 10/13/58, to consider subject's tax evasion conviction. Subject surrendered to custody of USM, SDNY, on 10/21/58, after court proceeding. Subject transferred from Federal Detention Headquarters, NYC, to US Penitentiary, Lewisburg, Pennsylvania, 10/21/58. Contact with informants set out. [redacted] b7C

D-D [redacted] Places frequented by subject, his mode

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: [redacted] b7C

(2) Bureau (92-2869)

4 - New York (92-649)

COPIES DESTROYED

MAY 22 1972

DO NOT WRITE IN SPACES BELOW

92-2869-70

REC-85

EX-102

25 NOV 12 1958

[redacted] b7C

52 NOV 26 1958

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SYNOPSIS (CONT'D)

of travel, habits and peculiarities, as well as miscellaneous information relating to subject set out. Subject and wife have a total amount of $2200.00 outstanding in U.S. Savings Bonds. INASMUCH AS SUBJECT WAS SENTENCED ON 4/15/15 TO THE NYC PENITENTIARY FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOF HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

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NY 92-649

DETAILS:

At New York, New York

A. Personal History and Background

1. Residence

The subject continues to maintain his apartment in the Majestic Apartments, 115 Central Park West, New York City, as observed by SA [redacted], on August 26; September 5,9,17,26; October 1,10,14,20,21, 1958. b7C

It is noted, on the above-mentioned dates, that subject was observed as he left his residence during the morning on these dates, and proceeded generally downtown, New York City.

It is noted that information has been previously reported to the effect that the apartment building in which subject resides was possibly in process of becoming a cooperative apartment building.

It is also noted, as previously reported, that the Majestic Tenants Protective Committee would attempt to seek in New York Supreme Court, the staying of the building owners, New York Majestic Corporation, from proceeding with plans to sell to the tenants the cooperative apartments for approximately six million dollars.

The books and card indexes for the New York Supreme Court, New York City, as reviewed on September 10, 1958, failed to reflect any reference to a proceeding in either of the names Majestic Tenants Protective Committee or the New York Majestic Corporation. The County Clerk's Office of the Supreme Court, Special Term, Parts 1,2 and 3, likewise failed to reflect any reference to a proceeding

under either of the above-mentioned names and the records likewise failed to reflect any motions for injunctions.

2. Employment

To date, no information has been developed indicating that subject has any place of regular employment.

It is noted the subject apparently continued his leisurely way of life until November 21, 1958, in that he generally left his residence between the hours of 10:00 and 11:00 o'clock in the morning and proceeded via taxicab to the Waldorf Astoria Hotel. The subject likely frequented the Waldorf Astoria Hotel barber shop where he remained for an hour or two and later likely frequented the Men's Bar, also located in the Waldorf Astoria Hotel. The subject would likely, in the afternoon, frequent the King Cole Bar in the St. Regis Hotel.

3. Relatives

It is noted that, as previously reported, the [redacted] However, investigation has failed to verify this date of birth.

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It is also noted, as previously reported, that Mrs. LORETTA B. COSTELLO, nee GEIGERMAN, reportedly was born in New York City, on October 28, 1898.

The records of the Bureau of Vital Statistics, Birth Records, as checked by SE [redacted] SA [redacted] SE [redacted] and SE [redacted] for the Boroughs of Bronx, Manhattan, Brooklyn, and Queens, on August 28, 1958, August 29, 1958, August 29, 1958, and September 5, 1958, respectively, failed to verify the birth of Mrs. COSTELLO as October 28, 1898.

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3. Reported Former Acquaintance of Subject

An article appearing in the "New York Daily News" of September 9, 1958, in part, reflected that "John (The Mortician) Robilotto was knocked off in an underworld

"war over control of Brooklyn's $20-million-a-year bookmaking business, and the identity of the gunman is known to detectives, high Brooklyn police officials disclosed last night."

"No. 1 suspect in the erasure of talkative Willie Moretti in 1951, Robilotto was 'very big' in the underworld, police said-so big, in fact, that he reportedly was among the top hoods summoned to the Apalachin summit conference. At least, he had bragged to associates that he was among the five or six delegates who slipped through the state police cordon."

"Robilotto, 54, a funeral director, was taken on what police technically described as 'a walking ride' early Sunday morning. At 3 A. M., he was known to have been in San-Chel's Restaurant, 5001 Kings Highway, in East Flatbush, a favorite hangout. At 3:35 A.M., he was found dead, shot four times, about a block away on Utica Ave."

"As a rackets funeral man, Robilotto ostensibly was only interested in the end products of gang dis- [illegible], but actually he was very powerful in [illegible]kets, too, detectives said. In the past few years, they disclosed, he had muscled his way into pieces of some two dozen bars and grills, and he was known as a banker's banker for Brooklyn loan sharks. From smuggling to wholesaling, he also was in the dope racket, and his intimacy with top hoods reached to the level of Vito Genovese and Frank Costello."

4. Information Relating to an Associate of Subject

[redacted]

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NY 92-649

On August 18, 1958, an article appearing in the "New York Journal American" stated as follows:

"Philip Kennedy, a friend of gambler Frank Costello-who was with him on the night he was shot, was arrested early today for allegedly beating his sister-in-law."

"Kennedy, 47, of 320 W. 76th Street, was charged with third degree assault on a complaint filed by Mrs. Lila Antebil, who lives in another apartment at the same address. Police described Mrs. Antebil as a sister of Kennedy's estranged wife."

"Kennedy at first refused to give his name, but finally admitted his identity when he was booked at the W. 68th Street station house. He listed his occupation as model.

"A radio car was dispatched to the W. 76th Street address shortly before 3 a.m. when an anonymous telephone caller reported a man beating up a woman there. Mrs. Antebil had blood on her face and in her hair, and accused Kennedy of beating her with his fists and throwing a bottle at her, hitting her on the right foot. She said the attack climaxed a party held last night in Kennedy's apartment to celebrate his child's third birthday. Among the guests, she said, was Kennedy's estranged wife. Patrolman Norman Weiss took both to the station house, where Mrs. Antebil lodged her formal complaint."

"Kennedy was with Costello on a round of night clubs on May 2, 1957, and accompanied him home in a cab. Costello was shot a few seconds later as he walked into the lobby of his apartment building, at 115 Central Park West. Kennedy was one of the first persons to reach the fallen mobster. He took Costello to Roosevelt Hospital for treatment of the bullet crease in his scalp and later accompanied him to a police station.

"At the time of the shooting, Kennedy was manager of the Hartford Modeling Agency, at 18 East 48th Street. His age, he said, was 30."

An article appearing in the "New York Mirror" on August 19, 1958, stated that "association with Frank Costello ages a man fast-as much as 17 years in 15 months. Or maybe it was the bickering with in-law. Anyway, Philip Kennedy, who was with Costello the night of the shooting on May 2, 1957, when the gambler's scalp was creased, metamorphosed yesterday from a bright young executive of 30 to a middle-aged male model of 47. When questioned after the Costello shooting he said he was 30. In court yesterday he gave his age as 47."

According to this article, KENNEDY was arrested on a charge of third-degree assault on a complaint of his sister-in-law, LILA ANTEBIL, 320 West 76th Street. In Manhattan Arrest Court, Miss ANTEBIL told Magistrate PHIPPS she was withdrawing the charge, that all she wanted was for KENNEDY to stay away from her. Magistrate PHIPPS dismissed the charge.

5. Current Associate

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Recent photographs of [redacted] b7C as well as recent photographs of subject, are being maintained by New York Office in instant file.

C. Criminal Activities

1. Legal Actions Involving Subject

a. Contempt of Court Sentence

An article appearing in the "New York Daily News" of October 1, 1958, reflected that "By 3-2 vote, the Appellate Division yesterday upheld a 30-day contempt of court sentence imposed on gambler Frank Costello by General Sessions Judge Jacob Gould Schurman for refusing to answer grand jury questions concerning the attempt on his life May 2, 1957. A would-be assassin shot and slightly wounded Costello on the head in the lobby of his apartment house at 115 Central Park West."

"Costello served 15 days of the sentence before winning freedom in $1,000 bail pending appeal. Morris Shilensky, Costello's lawyer, said the Appellate Division ruling probably would be appealed to the State Court of Appeals.

"Should the gambler elect to throw up his hands, and do time, he could win five days off of the remaining 15 through good behavior. Costello was a model pri ner during his previous hitch."

"Specifically, Schurman adjudged him in contempt for refusing to explain the meaning of a slip bearing the notation 'Gross Casino Wins 4/26/57 $651,284,' which was found in his clothing at the time of the shooting."

"In requesting the explanation, state authorities offered him immunity from prosecution. In the appeal, Costello's counsel said that an answer would lay him open to possible prosecution by federal authorities and hence would violate his constitutional right to refuse to testify against himself. But Associate Appellate Justice Francis Bergan, in the majority opini , held that the immunity offered was 'as adequate as the state can make it against its own subsequent prosecution' and potential federal prosecution was not enough to warrant refusal to answer. Presiding Justic Bernard Botein and Associate Justice James B. McNally concurred. Dissenting were Associate Justices Harold A. Stevens and Benjamin J. Rabin."

b. Attempt to Denaturalize Subject

An article appearing in the "New York Herald Tribune" of August 13, 1958, reflected that "the government acted yesterday to move up Frank Costello's second denaturalization trial."

"Last April, after a six-year battle, the United States Supreme Court dismissed on a technicality the government's action to strip the gambler of his citizenship, a necessary prelude before deportation to his native Italy can be attempted. The high court found that an affidavit of good cause, showing the evidence on which the government based its case, had not been filed

"on time in the original 1952 action."

"So yesterday Assistant United States Attorney Morton S. Robson, head of the civil division, asked Judge John Clancy in United States District Court to move the second Costello trial date up on the calendar to October. The prosecutor said this was necessary because of the advanced ages of the government's principal witnesses to the 1925 Costello naturalization, allegedly through misrepresentations."

In an article appearing in the "New York Telegram and Sun" of August 12, 1958, Assistant United States Attorney MORTON S. ROBSON said one witness was eighty years old, two were seventy-six, and one was seventy, and that two others were in the sixties. The denaturalization proceedings have been in and out of the courts since 1952. "Every additional delay of the trial in this action increases the possibility of the loss to the government of some of its key witnesses by death or infirmity", Mr. ROBSON told the court. "If the motion for [illegible]ctober trial is denied, the case will remain at the bottom of the court calendar, with the trial in the indefinite future.

According to the "New York Daily News" of August 20, 1958, a "hearing on a motion to place a denaturalization proceeding against gambler Frank Costello at the head of the fall trial calendar was postponed in Federal Court yesterday until Tuesday by Judge Frederick Van Pelt Bryan. The government contends that Costello lied repeatedly when he applied for citizenship in 1925. It says he asserted he was in the real estate business when he really was a bootlegger. A previous denaturalization proceeding was dismissed last April 7. Costello, meanwhile, is free in $25,000 bail pending a decision by the U.S. Supreme Court on whether it will review his income tax evasion conviction. He has been free in bail since 1956 after serving 11 months of a five-year sentence."

According to the "New York Daily News" of August 27, 1958, "Arguments on a government motion to place the denaturalizat' n proceeding against gambler Frank Costello in a top place on the court calendar were postponed until next Wednesday by Federal Judege John W. Clancy here yesterday."

An article appearing in the "New York Times" of September 9, 1958, reflected that the denaturalization trial of FRANK COSTELLO had been scheduled for December 1, 1958. Federal Judge JOHN W. CLANCY gave the gambler's case preference on the trial calendar yesterday after the Government said that two of its aged witnesses already had died, and that many of those to be called were in their late sixties or seventies. MORTON S. ROBSON, Assistant United States Attorney, told Judge CLANCY: "The age of witnesses in this [illegible] makes it imperative that we obtain as speedy a [illegible] possible. We feel that Costello would not [illegible]judiced in any way."

In an article appearing in the "New York Post" of September 14, 1958, "The Lyons Den" by LEONARD LYONS, it was stated that "Although Frank Costello has volunteered to leave America now, the U.S. Government insists upon denaturalizing him and deporting him after he serves four years in jail. But unlike Luciano and Joe Adonis, who never became U.S. Citizens, Costello took his Oath of American Citizenship. The Italian Government therefore won't readily agree to accept a native who foreswore allegiance to the King, especially when the application is complete with Rogues Gallery photo."

c. Income Tax Matter

According to an article appearing in the "New York Daily News" of October 14, 1958, dateline Washington, October 13, 1958, "The Supreme Court for the

"fourth time today refused to consider gambler Frank Costello's tax evasion conviction."

"The New York racketeer had his third appeal rejected by the court last June. He then sourght reconsideration of that action, and the court refused that request today."

"Costello has been free on $25,000 bond pending the series of appeals from his 1954 conviction for evading $28,000 in federal income taxes. He was sentenced to five years in jail and fined $20,000."

"Costello was found guilty in 1954 and served 11 months of a five-year term before his release in bail during several legal countermoves."

This same article stated that "The government will move for the 'immediate surrender' of Frank Costello, acting U.S. Attorney Arthur H. Christy announced ye[illegible] shortly after the U.S. Supreme Court denied [illegible]mbler's petition for a review of his income tax conviction and sentence."

An article appearing in the "New York Daily News" of October 14, 1958, entitled "Capital Circus" by PAUL HEALY, reflected the following:

"Just because the Supreme Court today refused to review appeals by Frank Costello and Paul (The Waiter) Ricca, don't assume that these two pillars of the underworld won't be around much anymore."

"One might think that a government can give a bum a bum's rush once he is tagged as an alien. But in the case of Uncle Sam it sometimes takes many years between moving against the unwanted character and putting him on a fast boat to a country that will take him. Under our laws, a smart lawyer can come up with literally scores of legalistic monkey wrenches capable of fouling up the eviction plans.

"Ricca, alias Paul De Lucia and estwhile heir to Al Capone's Chicago domain, now stands stripped of his citizenship because the high court let stand a denaturalization order issued two years ago. But, contrary to a popular misconception, losing your citizenship doesn't make you automatically deportable. In a separate action, the government must move against you on any of 31 grounds. Some of these grounds are convictions for crimes of moral turpitude, which are particularly apropos in the case of hoodlums."

"As for Costello, he failed to interest the Supreme Court today on his fourth appeal from his 1954 conviction for income tax evasion. But he won't be back in jail on that rap long before he is sprung again to face denaturalization proceedings-once again-in December. If the Immigration Service once more says he's not a valid citizen, and all appeals are turned down again, the government can then decide whether to try to deport him. Costello's complicated legal stratagems could only delight the imagination of someone like that master of the delaying tactic, mouthpiece Edward Bennett Williams."

"Costello hired Williams back in 1956, when he was sitting in jail and desperately wanted out. He had begun to serve his five-year income tax sentence and also had a denaturalization hanging over him. Williams has managed to keep Costello breathing Manhattan air most of the time since then. He got the denaturalization order thrown out in Federal District Court and he got Costello a new tax trial hearing, charging that the government had based both its cases on wiretapped evidence. Last April the Supreme Court dismissed the denaturalization order on one of the many technicalities Williams came up with in addition to the wiretapping charge. So the Immigration Service's complaint that Costello falsified his citizenship application back in 1925 was scheduled to start all over again in December."

"Costello would rather be an alien in this country-even if he must languish here in prison-than a citizen in Italy. After all, losing his citizenship a couple of years ago doesn't seem to have crimped the style of Vito Genovese, tagged by the Senate rackets committee as the $30 million 'king of crime.' As of now, at least to all intents and purposes, the U.S. does not consider Genovese legally deportable.

"Well-heeled racketeers have discovered that even when they are finally ordered deported by the Immigration Service, they can still spend some of the best years of their life in the U.S. The champ in this regard is Carlos Marcello, who is still a big man down in New Orleans, although his ouster order went through way back in February, 1953. Marcello, who has been convicted of a Narcotics Law violation, might well serve as a model for legal filibustering if Costello should ever find himself facing expulsion. Marcello's case has been carried to the Supreme Court three times."

It is noted that information relating to MARCELLO, as mentioned above, a former associate of subject, in New Orleans, Louisiana, has previously been reported.

An article in the "New York Daily News" on October 17, 1958, stated that "Gambler Frank Costello has been ordered to surrender in Federal Court next Tuesday to resume serving his 5-year sentence for income tax evasion, it was disclosed yesterday".

"Costello, 67, had served 11 months of the sentence when, in March, 1957, he was released in $25,000 bail pending appeal of the conviction. Last Monday the Supreme Court turned down a final move for a review of the case".

"Acting U.S. Attorney Arthur H. Christy received official notification of the ruling yesterday. He said he had immediately notified Costello's lawyer to have Costello surrender."

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The following spot checks were conducted by SA [redacted] on October 20, 1958:

10:10 a.m., the subject and his friend, JAMES P. O'CONNELL, departed subject's residence, 115 Central Park West, and entered a taxicab. They thereafter proceeded toward downtown New York City on Central Park West.

11:15 a.m., JAMES P. O'CONNELL was observed in the lobby of the Waldorf Astoria Hotel and he later proceeded to the barber shop in the hotel.

11: 25 a.m., the subject and O'CONNELL were observed leaving the Waldorf Astoria Barber shop. They proceeded through the lobby of the hotel and exited the lobby out a side door.

11:30 a.m., subject and O'CONNELL were observed in the Men's Bar in the Waldorf Astoria Hotel.

11:50 a.m., the subject and O'CONNELL were observed leaving the Men's Bar, 49th Street entrance, and proceeded across the street to the side entrance to the Hotel Barclay on 49th Street.

12:00 Noon, subject and O'CONNELL were observed at a table with Mrs. COSTELLO at the Kings Inn at the Hotel Barclay, 49th Street and Lexington Avenue.

1:20 p.m., the subject, Mrs. COSTELLO and O'CONNELL were observed departing the Kings Inn.

The subject and Mrs. COSTELLO left the Hotel Barclay. O'CONNELL was observed securing an automobile, a 1955 tan Cadillac Sedan with a brown top, New York license no. RE 7642 from the Carey Parking Lot, 105 East 48th Street. O'CONNELL drove alone north on Park Avenue.

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The following observations were made by SA [redacted] on October 21, 1958:

9:45 a.m., MORRIS SHILENSKY, subject's attorney, was observed entering subject's residence.

9:55 a.m., the subject and SHILENSKY, with O'CONNELL driving, were observed leaving subject's residence in a 1955 tan Cadillac Sedan, New York license no. RE 7642. O'CONNELL drove this automobile from Central Park West on West 72nd Street toward West Side Drive.

10:20 a.m. the subject, his attorney, SHILENSKY, and O'CONNELL were observed in Room 318, Federal Court House, Southern District of New York. Various newspaper reporters interviewed subject in the courtroom and SA [redacted] overheard the reporters after they left the courtroom saying the subject had reported to them that he had had a cold for several days, he had been unable to shake the cold, otherwise he felt fine.

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It is noted that many newspaper reporters and cameramen were present on the steps of the Federal Court House awaiting the arrival of the subject; however, after a delayed wait, a reporter was overheard by SA [redacted] as saying the subject had eluded the reporters by entering the Federal Court House by a subway entrance.

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10:40 a.m., after a brief court hearing before the Honorable JOHN F.X. MC GOHEY, the subject surrendered to custody of the United States Marshal, Southern District of New York.

11:05 a.m., the subject was observed in custody of the United States Marshal, Southern District of New York, in the Detention Pen in the Federal Court House.

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[redacted]

According to an article appearing in the "New York Times" of October 22, 1958, "Frank Costello, sullen and in 'no mood to talk', surrendered yesterday in Federal Court to resume serving a five-year sentence for income-tax evasion.

"The 67-year-old gambler was convicted in 1954 of having evaded a total of $28,332 in taxes in 1948 and 1949. After various appeals had failed he went to jail on May 14, 1956. On March 11, 1957, he was released in $25,00[illegible] bail when his lawyers contended that his conviction had been based on illegal wiretap evidence.

"The United States Supreme Court refused to review the case ten days ago. With time off for good behavior, Costello could be free in two years and eight months. He is eligible for parole in nine months.

"Dressed in a blue topcoat and blue suit, Costello arrived at the courthouse with one of his lawyers, Morris Shilensky, at 10:20 A.M. Ten minutes later, Dave Sweeney, the court clerk, called for the gambler to surrender. With head bowed, Costello walked toward the clerk, raised his right hand to wave good-by, then shuffled toward the detention pen.

"Minutes before, Mr. Shilensky had unsuccessfully urged Judge John F.X. McGohey to postpone the surrender until after the gambler's denaturalization trial, scheduled for the week of Dec. 1. This move was opposed by acting United States Attorney Arthur H. Christy .

"More than a score of reporters, photographers and newsreel men were on hand. United States Marshal Thomas Lunney said that Costello would be moved to the Federal House of Detention on West Street at 1 P.M. along with other prisoners.

"At 12:50, the newsmen went to the ground-floor detention cell. They learned that Mr. Lunney had driven the gambler in the marshal's private car to West Street more than an hour before. Mr. Lunney later explained that Mr. Costello had complained of not feeling well.

Shortly after he arrived at West Street, Costello was placed in a van with other prisoners for the Federal Penitentiary at Lewisburg, Pa. A prison spokesman said the gambler had not complained of being ill.

When Costello first arrived at the courthouse he told reporters he was not in a mood to talk. He said he had had a cold for seven or eight days, but otherwise felt fine.

Other New York City newspapers recorded the proceedings in part as follows:

The "New York Journal American" on October 21, 1958, stated that "His face impressive - with just a flicker of amusement in his eyes - Frank Costello surrendered in Federal Court today to go back to prison to serve the remainder of a 5-year sentence for income tax evasion.

"During his lawyer's plea, 'Frankie C' sat with the indifference of a guy resigned to watching a boring movie he's seen before on TV.

"'No,' Judge McGohey told the lawyer, 'I won't grant that motion.'

"That ended court proceedings and Costello was ordered jailed.

"I watched as Costello stepped briskly from the courtroom, a U.S. Marshal following, but not touching his prisoner.

"What was going through Costello's mind is anybody's guess. He is not a talkative man - a reasonable deduction since he's alive to go to prison. But as he took a seat in the courtroom he was more talkative than usual.

"'I do not think it is very fair to return me to prison at this time,' Costello told the assembled reporters in his raspy, steel-wool voice.

"'It will handicap me in contacts with my attorneys. I will be put in solitary for 30 days and that will not afford a close association with my counsel in the Government's denaturalization proceeding against me. Other persons have been given better treatment by the government than I have, but I'm not really bitter about it.'"

According to the "New York World Telegram" of October 21, 1958, "Head bowed, a dapper but subdued Frank Costello surrendered to federal authorities today to serve out the remainder of a five-year sentence for income tax evasion.

"The 67-year-old gambler could manage only a weak smile for reporters as he strode into Federal Court to face Judge John F.X. Mc Gohey. He wore a well-tailored blue suit and a red tie, but his puffy, bloodshot eyes indicated the strain he was under.

"In the familiar gravel voice, Costello said he has a cold. 'Outside of that, I feel fine,' he added with a thin smile."

In an article appearing in the "New York Herald Tribune" of October 22, 1958, it was stated that

"With the resigned farewell wave of a highly manicured right hand, Frank Costello returned to prison yesterday to finish out the bulk of a five-year term for income-tax evasion.

"Ironically, he found himself facing the very same judge who had conducted his trial for evading $28,332 in 1948 and 1949 - Judge John F.X. McGohey. He just happened to be sitting in Room 318, the motion part of the court, where jurists sit for about a week at a time, taking turns.

"His lawyer, Morris Shilensky, then moved to delay the gambler's surrender until after his second deportation trial, scheduled to begin Dec. 1. (The Supreme Court set aside the first, which went against him, on a technicality.) United States Attorney Arthur H. Christy argued against this motion successfully. Also, the court advised the lawyer, who wanted his client kept at Federal Detention Headquarters, West and 11th Sts., for his deportation proceedings, to make his request to the Federal Bureau of Prisons.

"A moment later, the defendant's last legal motion burned down, David Sweeney, the court clerk, called out: 'Costello.'

"Costello stood up, touched his Italian-silk maroon tie with his left hand, walked through the well of the court, waved with his right as he kept his head down, and entered an elevator which took him to a temporary detention cell in the court house. Photographers hung around, hoping to get a picture of him, since he had given them the slip in entering the building through the BMT subway."

b7C [redacted] Federal Detention Headquarters, 427 West Street, New York City, advised on October 27, 1958, that subject was received at the Federal Detention Headquarters

briefly on October 21, 1958, and was soon thereafter transferred to the United States Penitentiary, Lewisburg, Pennsylvania, where he is now incarcerated.

2. Contact with Informants

[redacted]

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3. Current Activity of Subject Until October 21, 1958

Subject apparently continued to maintain his usual daily activities up until the time of his incarceration on October 21, 1958. As observed, he generally left his residence between the hours of 10:00 and 11:00 o'clock each morning and proceeded via taxicab downtown to the Waldorf Astoria barber shop and thereafter would go the Men's Bar, also located in the Waldorf Astoria Hotel. He likely thereafter in the evening would frequent the King Cole Bar in the Hotel St. Regis.

D. Legitimate Enterprises With Which Subject Has Reportedly Been Connected

1. Real Estate

Lots in Broward County, Florida

The Miami Office furnished information on September 5, 1958, that [redacted] b7C
[redacted] Broward County Court House, Fort Lauderdale, Florida, advised SA [redacted] on September 2, 1958, b7C
that Broward County Tax Rolls, corrected to March 1, 1957,

reflect that LORETTA COSTELLO is listed as owner and pays taxes on Lots 12,13, and 14, Block Number 39, Hollywood Lake Section, Broward County, Florida, according to Plot Book Number 1, Page 32, of the Public Records. LORETTA COSTELLO's address is listed as 115 Central Park West, New York 23, New York.

b7C [redacted] reviewed Direct and Indirect Index to property ownership in Broward County, and advised that to date, September 2, 1958, the above-described property has not been sold and is still owned by LORETTA COSTELLO.

b7C [redacted] further advised that Plot Book Number 1 reflects that the above property is located on the Northwest corner of the intersection of Hollywood Boulevard and 11th Avenue, Hollywood, Florida, and is unimproved.

b7D [redacted]

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Tropicana Hotel
Las Vegas, Nevada

It is noted that much information relating to subject's reported interests in the Tropicana Hotel, Las Vegas, Nevada, and possible acquaintance with LOUIS J. LEDERER, a former stockholder of the Tropicana Hotel, has previously been set out in New York reports in instant matter. It is also noted, as previously reported, that LEDERER lost his gambling license in the State of Nevada several months ago and moved to Los Angeles, California.

In a series of articles entitled "Gambling U.S.A.", written by BILL SLOCUM, the following, in part, appeared in the September 10, 1958, edition of the "New York Daily Mirror":

"Louis J. Lederer, of Chicago got caught because Frank Costello, of New York, got hit slightly in the noggin with a bullet on May 2, 1957."

"When the New York coppers got Mr. Costello to the station house they frisked him, just like a shot up legitimate citizen. They found a piece of paper containing figures that were obviously the financial statement of a gambling house."

"The figures matched to a penny the figures of a brand new craps hostel in Las Vegas, known as Tropicana. Mr. Lederer was in charge of the Tropicana's casino and on record as owning $180,000 worth of stock. And part of the writing on the slip found in Mr. Costello's pocket was indubitably Mr. Lederer's handwriting."

"Mr. Lederer was forthwith ordered to divest himself of Tropicana shares on the grounds that he was in obvious association with a fairly well known American hoodlum, Mr. Costello."

"Already the Nevada Gambling Control Board had ordered Tropicana to free itself of a major stockholder, 'Dandy Phil' Kastel, an old, old, old pal and business partner of Mr. Costello. Mr. Dandy Phil was in for a mere $320,000."

"Mr. Lederer was found to be a shareholder in two other places. That posed a delicate point. Mr. Lederer had been proved either a partner or an employee of Frank Costello. Either position was not acceptable to the Board. But Mr. Lederer had only been caught in the Tropicana transaction."

"After some hemming and hawing, it was, in time, decided that he who worked for Costello in the Tropicana might also work for him elsewhere. So, Louis had to give up his lucrative pieces of the other two joints."

"How painful this loss was to Mr. Lederer depends entirely upon how seriously Mr. Lederer has taken the Commission's orders. It is hard to tell who owns any share of any stock in any casino because the name on record may or may not be the name of the guy who really owns the valuable paper."

"This has been a good year for Las Vegas save for the bad publicity emanating from the poor marksmanship of somebody gunning for Mr. Costello."

An article in the "New York Daily News" on August 19, 1958, reflects that "the lavish Tropicana Hotel casino, Las Vegas, Nevada, in which Frank Costello has held an interest, closed for four hours today after its manager reported: 'the bank is busted'."

"The order, given by casino manager Mickey Colohan at 7 A.M., was countermanded by Robert O. Cannon, general manager of the hotel, at 11 A.M. and the 24-hour-a-day gaming was resumed.

"Stockholders in Chicago were reported to have voted an additonal $500,000 to stake the casino operation, which Colohan said had been hard hit by a series of heavy winners, some of whom gained up to $30,000. The stockholders also voted to replace Colohan with J. Kell Houssels, a former manager. Cannon said Colohan had acted without authority."

"Colohan, in closing the casino, claimed that the $500,000 bank with which the operation began in April, 1957, had shrunk so low that 'I can no longer in good caution continue the games.' 'As they say at Monte Carlo, the bank is busted', he said."

"Costello's name was linked to the Tropicana's ownership a year ago when a list of gambling winnings, found on Costello after an attempt was made on his life, was discovered to tally exactly with the current take reported by the Tropicana. District Attorney Frank Hogan of New York said then that it was 'safe to assume that Costello has a good piece of the Tropicana.'"

[redacted]

b7C, D

NY 92-649

Vacation Village
Grand Bahama Island
Florida

The "Herald Tribune" newspaper of April 30, 1951, contained an article indicating that LIONEL MARKS, an associate of FRANK COSTELLO, offered to buy within a year, the multi-million dollar vacation village on Grand Bahama Island, sixty miles east of Palm Beach, Florida, for a reported four million sixty thousand dollars to be paid in cash. This newspaper article went on to state that the plans of Mr. MARKS and his associate called for an additional expenditure of seven million dollars on improvements of property including racetrack and clubhouse.

Both MARKS and his attorney, SYDNEY KRAUSE, [redacted] Broadway, New York City, have denied reports that [redacted] syndicate planned to erect on Grand Bahama Island, a large gambling casino designed to attract United States gamblers.

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Concerning Prestige Frocks, Inc., 240 West 35th Street, New York City, Assistant United States Attorney F.G. PERROTTA, Southern District of New York, requested the New York Office to conduct an accounting Anti-Racketeering investigation during July, 1956, relative to the Prestige Frocks, Inc. Investigation was requested to ascertain the individuals possessing an interest in the corporation.

Investigation reflected that Prestige Frocks, Inc., 240 West 35th Street, was chartered in New York State, November 9, 1949, and the firm manufactures misses dresses and sells principally to department and chain stores.

In compliance with a subpoena duces tecum, the records of Prestige Frocks, Inc., were delivered to the Federal Court House, Southern District of New York. An examination of the stock certificate reflected no ownership in the company by subject, [redacted], an examination of the other records did not disclose any payments to, or endorsed checks by subject or of any financial interest of subject in the company.

Interstate Dress Carriers
247 West 35th Street,
New York. New York

It is noted, as previously reported, that the Philadelphia Office has furnished information indicating that possibly subject may have in the past, had a financial interest in the Interstate Dress Carriers, Inc.

Concerning the Interstate Dress Carriers, Inc., Assistant United States Attorney MARK F. HUGHES, Jr.,

Southern District of New York, in January, 1957, requested the New York Office to conduct an accounting Anti-Racketeering investigation relative to the corporation. Investigation was requested to ascertain in part, the individuals possessing an interest in the corporation, any payments made to alleged racketeers or union representatives, and if payoffs were made to anyone.

Investigation reflected that Interstate Dress Carriers Dress Corporation was chartered on March 5, 1946, and is active as a motor carrier doing general trucking and express business specializing in transporting wearing apparel for manufacturers. In compliance with a subpoena duces tecum, the records of this corporation were delivered to the United States Court House, Southern District of New York. An examination of the Cash Receipts Journals and Cash Disbursement Journals, no payments to or check endorsements by known racketeers or hoodlums were noted. This investigation did not disclose any financial interest of subject in this corporation.

[redacted]

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It is noted that additional information concerning oil interest of subject has previously been reported.

E. Places of Amusement and Hang-outs Frequented By Subject

[redacted] b7C

The subject was observed by SA [redacted] in the Waldorf Astoria Barber Shop at [redacted] 1:30 a.m., on October 3, 1958.

The subject was also observed by SA [redacted] b7C in the Waldorf Astoria Barber Shop on October 20, 1958, as previously set out in instant report.

On October 20, 1958, the subject and his wife, Mrs. COSTELLO, and JAMES P. O'CONNELL were observed by SA [redacted] b7C eating their noon meal in the Kings Inn of the Barclay Hotel, 49th Street and Lexington Avenue.

F. Travel

Subject continued to travel exclusively by taxicabs as observed by SA [redacted] b7C on August 26; September 5,9,17,26; October 1,10,14,20, 1958.

67C On October 21, 1958, the subject was observed by SA [redacted] as he travelled in a 1955 tan and brown Cadillac Sedan bearing New York license no. RE 7642, as driven by JAMES P. O'CONNELL, subject's friend. The ownership of this automobile has previously been identified in instant report.

G. Personal Habits and Peculiarities of Subject

67C The following characteristics or peculiarities of subject have been noticed by SA [redacted] and are set out as follows:

Subject leaves his residence generally between the hours of 10:00 and 11:00 o'clock each morning.

Subject does not wear a hat.

Subject smokes cigarettes.

Subject walks briskly, somewhat of a waddling walk, whenever he walks down the sidewalk.

Subject does not appear to be conscious of anyone observing him as he does not look around from side to side or to the rear in an effort to observe anyone who might be following him.

Subject has a hoarse, gravel voice.

Subject dresses very neatly, usually in a dark blue suit, and wears loud ties. He generally puts on his heavy black hornrim glasses after he leaves his residence and is on the sidewalk.

Additional habits and characteristics of subject are set out elsewhere in instant report.

An article appearing in the "New York Post" on October 21, 1958, entitled "Daily Closeup Frank Costello" reflected that "Frank Costello, of 115 Central Park West and Sands Point, Long Island, noted business executive and long-time friend and associate of many of the most widely known figures of his time, is due to surrender today in Federal Court to resume serving a five-year sentence for income-tax evasion. His age is 67.

"Regarded as one of the nation's leading authorites on the protection of small businesses, the clandestine importation of contraband goods and many forms of gambling, Mr. Costello appeared in prison only infrequently during his long career, preferring to pursue his varied and lucrative interests in the barber-shop or the Men's Bar of the Waldorf-Astoria Hotel, in Toots Shor's restaurant, or on any one of a number of fashionable golf courses in the metropolitan area.

"Mr. Costello devoted almost as much time to philanthrophy as to business, a fact he had successfully concealed until nine years ago, when a report that he had organized a dinner in behalf of the Salvation Army at the Copacabana night club found its way into the press.

"The hundred or so business and political leaders who had attended the dinner at Mr. Costello's invitation were distressed when news of the event was made public, being aware of their host's desire for anonymity in his charitable work.

"One particularly close friend, a New York Supreme Court judge, expressed the almost

"unanimous reaction of the dinner guests when he said ruefully, 'If we'd of knew the papers would blab about Uncle Frank we'd of stood home that night.'

"The judge was not Mr. Costello's nephew.

"Mr. Costello was always fastidiously groomed. He favored dark blue suits with pin or chalk stripes, and discarded 25 or 30 of them at the end of each season. He wore white shirts. He had his shoes polished and his nails manicured daily and often bestowed $5 tips on the technicians who performed those services for him. His favorite accessories were platinum cufflinks, hand-painted four-in-hand neckties and a platinum money clip for the several thousand dollars in bills of large denominations that he customarily carried with him.

"On one occasion, with unwonted absent-mindedness, he left $27,200 in cash on the seat of a taxicab in which he had been riding, and his efforts to recover the money from the police lost property bureau provided him with material for one of this most amusing after-dinner anecdotes.

"The story of Mr. Costello's rise, from the squalor of the tiny Calabrian village in which he was born and of the East Harlem tenement into which his family moved when he was 4, to wealth, renown and intimacy with the great, is one which, if not precisely in the vein of Horatio Alger, is nevertheless unmistakably American.

"A man who often drew upon the colorful locutions of his youth, he once explained East Harlem life in the early days of the century by saying, 'Tough times make monkeys eat red peppers.'

"Mr. Costello left East Harlem during his adolescence for the more stimulating environs of Greenwich Village, Chelsea and Hell's Kitchen, where he became associated with a widely respected local organization called the Hudson Dusters. In 1908 he suffered a youthful mishap which continued to be a topic of good-natured banter, as he went through life, between him and his many acquaintances on the police force: he was arrested on a charge, soon dismissed, of assault and robbery.

"Rather more serious, in his view, was a second arrest, in 1915, for carrying a pistol concealed on his person. For that indiscretion he was sentenced to a year in the penitentiary. Never one to repeat the same mistake, Mr. Costello avoided the personal use of firearms, as being too dangerous, from that time on. However, since he was, above all, a man of broad tolerance, he seldom objected to their employment by his subordinates.

"Emerging from prison as World War I drew to a close, Mr. Costello was among the first to sense the commercial opportunities afforded a young man by the passage of the 18th Amendment to the Constitution and the so-called 'Volstead Act.' Entering the business of importing wines and spirits from Canada in speedboats equipped with armor plate, he soon was able to boast an income estimated at $5,000 a week.

"Mr. Costello's career from then on has been detailed too often to require more than a cursory recapitulation: his ventures met with uninterrupted success and by the early 1930s he was reputed to be in receipt of an annual income approaching $4,000,000, and was generally referred to by his associates either as 'The Prime Minister' or as 'the man you gotta see'.

"Throughout the 1940s he devoted himself quietly to his work, resisting the importunities of those who felt that his career had been so interesting that he owed it to his country to reveal all its details. It was not until 1951 that, at the urging of Sen. Estes Kefauver, whose invitation he could scarcely have refused with grace, he permitted his hands to appear for several days before a nationwide television audience, though he soon tired of the cameras and bright lights and refused to appear before them again despite Sen. Kefauver's pressing pleas.

* * *

In recent years Mr. Costello found it necessary to curtail his activities a good deal. Although he spent 14 months during 1952 and 1953 recuperating from his television ordeal in the Milan (Mich.) Federal Correctional Institution, his health was never as good as it had been and a year and a half ago he suffered a painful accident; a bullet fired from a .38-caliber pistol wounded him in the scalp.

"A modest man who shunned publicity and preferred to let his deeds speak for themselves, he had resolved as a youth that he would avoid boasting about himself or his career. That he adhered determinedly to that early vow despite subpenas, offers of immunity, citations for contempt and other almost irresistible blandishments, illustrated the native streak of firmness that was so much a part of his character and was so unreservedly admired by his business associates.

"Mr. Costello was married in 1914 to Miss Loretta Geigerman of this city.

INASMUCH AS SUBJECT WAS SENTENCED ON APRIL 15, 1915, NEW YORK CITY PENITENTIARY, FOR ONE-YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, THE SUBJECT SHOULD BE CONSIDERED DANGEROUS.

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2. Observations of Subject

The subject was observed by SA [redacted] b7C at 7:00 p.m. on August 21, 1958, alone in P.J. Clark's Restaurant, 53rd Street and Third Avenue, New York City.

The subject was observed by SA [redacted] b7C at 10:15 a.m. on August 26, 1958, as he left his residence and proceeded via taxicab downtown on Central Park West.

The subject was observed by SA [redacted] b7C at 10:20 a.m. on September 5, 1958, as he left his residence, 115 Central Park West and travelled by taxicab downtown on Central Park West.

It is noted that on the above date, as an unidentified mother walked in front of subject's residence, she pointed out to her five-year old son that "there's where Costello lives" as she pointed to the subject's residence.

On September 9, 1958, SA [redacted] b7C observed the subject as he left his residence at 9:55 a.m. He walked alone on the west side of Central Park West, down to 59th Street and Central Park West where he crossed Columbus Circle and flagged a taxicab at Central Park South and proceeded east. He wore no hat, he was alone, he smoked cigarettes, and did not appear to look around during his walk from 72nd Street to 59th Street. He walked very

briskly and after he got out on the street, he put on his dark horn-rimmed glasses.

At 11:30 a.m. on September 9, 1958, the subject was observed as he left the Waldorf Astoria Barber Shop, walked through the lobby and walked down the stairs to the Men's Bar where he had a drink. At 11:45 a.m., he came out of the Men's Bar alone, took a taxicab on 49th Street and proceeded uptown on Park Avenue via the taxicab.

The subject was observed by SA [redacted] at 10:00 a.m. on September 17, 1958, at 10:00 a.m. on September 26, 1958, and at 10:10 a.m. on October 1, 1958, as he left his residence and entered a taxicab where he proceeded downtown on Central Park West. b7C

The subject was observed leaving his residence at 9:55 a.m. on October 10, 1958. He walked alone on the west side of Central Park West to 68th Street where he motioned for a taxicab and upon entering, he proceeded downtown. On the same date he was observed by SA [redacted] at 11:25 a.m. as he proceeded from the Waldorf Astoria Barber Shop to the Men's Bar, also in the Waldorf Astoria Hotel. b7C

The subject was observed by SA [redacted] at 11:10 a.m. on October 14, 1953, as he and his friend, JAMES P. O'CONNELL, left the subject's residence and proceeded via taxicab downtown. b7C

The various observations of the subject by SA [redacted] on October 20 and October 21, 1958, has previously been set out in instant report under captioned "Income Tax Matter". b7C

On September 7, 1953, (Sunday), SA [redacted] spot checked the subject's residence at 5 Barkers Point Road, Sands Point, Long Island, New York, in an effort to observe the subject, however, subject was not observed. b7C

[redacted]

b7C,
b7D

4. Subject and Wife's Ownership of United States Savings Bonds

T-4 made available on August 6, 1958, the following information relating to United States Savings Bonds formerly held and currently held by either subject or wife or subject and wife:

Inscription	Issuing Agent	Bond Number	Issue Date	Denomination	Payment Date	Paying Bank
Mrs. LORETTA B. COSTELLO, 115 Central Park West, New York City	Corn Ex-Change Bank and Trust Company, 260 Columbus Avenue, New York City	L2,652,005E	December, 1941	$50.00	March, 1948	Corn Exchange Bank and Trust Company, Main Office New York City
Same	Same	L2,652,006E	Same	$50.00	Same	Same
Same	Same	C15,947,357E	August, 1942	$100.00	Outstanding	
Mrs. LORETTA B. COSTELLO or FRANK COSTELLO, 115 Central Park West, New York City	Same	C15,063,188E	July, 1942	$100.00	Outstanding	
Same	Same	C15,063,189E	Same	$100.00	Outstanding	
Same	Same	C17,683,434E	September, 1942	$100.00	Outstanding	
Same	Same	C17,683,435E	Same	$100.00	Outstanding	
Mrs. LORETTA B. COSTELLO, 115 Central Park West, New York City	Same	C15,947,358E	August, 1942	$100.00	Outstanding	

Inscription	Issuing Agent	Bond Number	Issue Date	Denomination	Payment Date	Paying Bank
FRANK COSTELLO paid on death to Mrs. LORETTA COSTELLO, 115 Central Park West, New York City	Chemical Bank and Trust Company, Lexington Avenue, West 49th Street, New York City	C2,583,602E	December, 1941	$100.00	Outstanding	
Same	Same	C2,583,603E	Same	$100.00	Outstanding	
Mrs. LORETTA B. COSTELLO, Majestic Apartments, New York City	Chemical Bank and Trust Company, Lexington Avenue, 49th Street, New York City	Q25,967,525E	May, 1942	$25.00	March, 1948	Corn Exchange Bank and Trust Company, Main Office, New York City
Mrs. LORETTA B. COSTELLO, 115 Central Park West, New York City	Terminal Barber Shops Inc., New York City	D13,303,800E	November, 1945	$500.00	Outstanding	
Same	Corn Exchange Bank and Trust Company, 260 Columbus Avenue, New York City	C18,963,776E	September, 1942	$100.00	Outstanding	
Same.	Federal Reserve Bank of New York	M1,026,202E	September, 1942	$1,000.00	October, 1944	Corn Exchange Bank and Trust Company New York City

Inscription	Issuing Agent	Bond Number	Issue Date	Denomination	Payment Number	Paying Bank
Same	Federal Reserve Bank of Atlanta	M4,367,572E	April, 1943	$1,000.00	November, 1946	Same
Same	Corn Exchange Bank and Trust Company, 260 Columbus Avenue, New York City	C33,348,467E	April, 1943	$100.00	Outstanding	
Mrs. LORETTA B. COSTELLO 115 Central Park West New York City	Corn Exchange Bank and Trust Company, 260 Columbus Avenue, New York City	C53,291,625E	October, 1943	$100.00	Outstanding	
Same	Same	C53,291,624E	Same	$100.00	Outstanding	
Mrs. LORETTA B. COSTELLO or FRANK COSTELLO, 115 Central Park West, New York City	Same	M6,821,786E	February, 1944	$1,000.00	April, 1947	Corn Exchange Bank and Trust Company, Main Office, New York City
Mrs. LORETTA B. COSTELLO, 115 Central Park West, New York City	The Terminal Barber Shops Inc., New York City	D13,292,089E	May, 1945	$500.00	Outstanding	

Total Amount of Savings Bonds Purchased ---------- $5,325.00
Total Amount of Savings Bonds "cashed in" ---------- $3,125.00
Total Amount of Savings Bonds outstanding ---------- $2,200.00

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

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Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☒ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☒ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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92-2869-70 pgs. 88, 89 & 90

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FBI/DOJ

b7D [redacted]

b7C, D [redacted]

b7C, D [redacted]

An article appearing in the "New York Daily News" of August 22, 1958, reflected in part, "that the first group of 14 'ordinary' Soviet citizens to travel to the U. S. as tourists found themselves the objects of several spontaneous demonstrations of friendly American kind-as they went about Manhattan yesterday on their first day of organized rubbernecking."

"The group left the Hotel Governor Clinton shortly after 9 A. M. in a bubbletop Gray Line touring bus, and took in such sights as the Columbia University Library, Harlem, Chinatown, and Wall St. Tour announcer Dick Palmer obligingly pointed out that 'Frank Costello lives over there', as the bus passed the Majestic Apartments at 71st St. and Central Park West, but the added unscheduled 'attraction' appeared to puzzle the Russians and the party stared straight ahead."

A WALTER WINCHELL article appearing in the "New York Mirror" on September 24, 1958, under "Broadway Silhouettes," it was stated that "Frank Costello, shopping for cheesecake and Friday night 'holly' (bread) at the 7th Avenue Dairy near 53rd."

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

5 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

☐ Information pertained only to a third party with no reference to you or the subject of your request.

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92-2869-70 pgs. 92 through 96

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FBI/DOJ

OFFICE MEMORANDUM United States Government

TO: DIRECTOR, FBI (92-2869) DATE: 11/10/58

FROM: [redacted], NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, was
AR

b7c

Enclosed herewith are 2 copies of the report of SA [redacted] dated and captioned as above.

b7c

REFERENCES

Boston letter to NY, 8/14/58.
New Orleans letter to NY, 8/15/58.
NY letter to Bureau, 8/19/58.
Legat, London, England, letter to Bureau, 8/18/58.
Legat, Havana, Cuba, letter to Bureau, 8/20/58.
Butte letter to Los Angeles, 8/21/58.
NY letter to Bureau, 8/27/58.
NY letter to Bureau, 8/28/58, with enclosed report of SA [redacted] NY, 8/28/58.
b7c
NY letter to Boston, 9/2/58.
Oklahoma City letter to Bureau, 9/3/58, with enclosed report of SA [redacted] Oklahoma City, 9/3/58.
Dallas letter to NY, 9/4/58.
Miami letter to NY, 9/5/58.
NY letter to Bureau, 8/20/58.
New Orleans letter to NY, 9/17/58.
San Francisco letter to NY, 9/26/58.
Los Angeles airtel to NY, 10/3/58.
Newark letter to NY, 10/21/58.
NY airtel to Bureau, 10/21/58.

[redacted] b7c

ADMINISTRATIVE

Subject was sentenced by Honorable JOHN F. X. MC GOHEY in USDC, SDNY, on 5/17/54, to a term of five years and was fined $30,000 for unlawful evasion of income taxes in violation of Section 145, (b),

EX-102

2-Bureau (92-2869) (Encls.2) 92-2869-71
4-New York (92-649)

b7c [redacted] (c)

REC-85

25 NOV 12 1958

ENCLOSURE

REC-85

52 NOV 26 1958

EX-102

[redacted] b7c

Title 26, USC-Attempt to Defeat and Evade Income Taxes for the years 1946-1949. He served approximately 11 months of this term and was released from custody in $25,000 bail on 3/11/57 by an order of the US Supreme Court. The US Supreme Court for the 4th time, on 10/13/58, refused to consider subject's tax evasion conviction. Subject surrendered to custody of USM, SDNY, on 10/21/58, to resume serving the remainder of his sentence. He was transferred on the same date from the Federal Detention Headquarters, NYC, to the US Penitentiary, Lewisburg, Pennsylvania.

Inasmuch as the subject will likely be incarcerated during the next several months in a Federal prison, and no violation within the Bureau's jurisdiction having been developped against subject, this case is being placed in a closed status. In the event information comes to the attention of the NYO in the future necessitating the reopening of this case, this case will be reopened.

No dissemination has been made to outside agencies in instant case.

INASMUCH AS THE SUBJECT WAS SENTENCED ON 4/15/15 TO THE USC PENITENTIARY FOR ONE YEAR FOR POSSESSION OF A REVOLVER AND DUE TO HIS REPORTED ASSOCIATION WITH TOP HOODLUMS, SUBJECT SHOULD BE CONSIDERED DANGEROUS.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 5 1958

[redacted] b7C

TELETYPE

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
[illegible]
[illegible]
Mr. Trotter
Mr. W.C.Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

URGENT 12-5-58 8-37 PM JC

TO DIRECTOR 3

FROM SAC, NEW YORK

FRANK COSTELLO, WAS., AR. AUSA JOHN A. GUZZETTA, SDNY, MADE AVAILABLE INFORMATION ON THIS DATE THAT COMMUNICATIONS EITHER TO THE BUREAU OR ORIGINATING FROM BUREAU ARE CONTAINED IN INS FILES WHICH ARE NOW IN OFFICE OF USA, SDNY. IT IS CONTEMPLATED BY GUZZETTA THAT THESE FILES WILL BE REQUESTED BY PRESIDING JUDGE IN THE FORTHCOMING DENATURALIZATION TRIAL OF COSTELLO SCHEDULED TO START IN USDC, SDNY, ON DECEMBER TEN, FIFTY EIGHT. GUZZETTA REQUESTED THAT FBI DECLASSIFY THESE COMMUNICATIONS MOST OF THEM BEING STAMPED QUOTE CONFIDENTIAL UNQUOTE, AS INS WILL DECLASSIFY THEIR FILES PRIOR TO FURNISHING INS FILES TO FDJ. HOWEVER INS CANNOT DECLASSIFY UNTIL FBI, A THIRD PARTY, DECLASSIFIES. COMMUNICATIONS INCLUDE THE FOLLOWING. TWO BLANK MEMORANDA DATED SEPTEMBER FIVE, FIFTY TWO, RE FRANK COSTELLO, WAS., IN SUBSTANCE STATES BIRTH PLACE OF COSTELLO, HIS PORT OF EMBARCATION, DATE CITIZENSHIP GRANTED, HIS

[redacted] b7C

END PAGE ONE

EX. 101 REC-82 92-2869-72

DEC 10 1958

[redacted] b7C

Mr. Rosen
Mr. Trotter

ADDRESS, ALLEGATION HE WAS ENGAGED IN BOOTLEGGING ACTIVITIES IN NINETEEN TWENTY THREE, THEN BRANCHED INTO GAMBLING AND SLOT MACHINES AND CHARACTERIZED IN PRESS AS ONE OF MOST PROMINENT UNDERWORLD FIGURES IN COUNTRY. THESE TWO MEMOS ENCLOSED IDENTIFICATION DIVISION RECORD OF COSTELLO UNDER FBI NUMBER NINE THREE SIX TWO ONE SEVEN DATED SEPTEMBER FIVE, FIFTY TWO. LETTER TO INS, WASHINGTON, D.C. FROM BUREAU OCTOBER THIRTEEN, FIFTY TWO, RE FRANK COSTELLO, REQUESTED PHOTOGRAPH OF COSTELLO TAKEN MAY THIRTY ONE, THIRTY FIVE AND COPY OF HIS STATEMENT TAKEN AT SAME TIME IN CONNECTION WITH NOEL SCAFFA JEWEL ROBBERY CASE. BUREAU TRANSMITTED PHOTO OF COSTELLO TAKEN ON MAY THIRTY ONE, THIRTY FIVE, WHEN HE SURRENDERED TO USA, SDNY, TO ANSWER COMPLAINT IN NOEL SCAFFA CASE CHARGING HIM WITH CONSPIRACY TO TRANSPORT STOLEN PROPERTY IN INTERSTATE COMMERCE IN VIOLATION OF NSPA. PHOTO TAKEN AUGUST TWENTY TWO, FIFTY TWO AT USP LEWISBURG, PA., WHERE INCARCERATED FOR REFUSING TO ANSWER CERTAIN QUESTIONS BEFORE US SENATE SUBCOMMITTEE INVESTIGATING CRIME, ALSO TRANSMITTED. THIS COMMUNICATION

SET OUT THAT STATEMENT OF COSTELLO TAKEN IN QUESTION AND ANSWER FORM ON MAY THIRTY ONE, THIRTY FIVE, WAS SET OUT ON PAGES FIFTY THREE TO FIFTY NINE IN REPORT OF SA [redacted] b7C DATED JUNE TWELVE, THIRTY FIVE AT NYC IN CASE ENTITLED QUOTE NOEL CHARLES SCAFFA, ET AL, NSPA DASH CONSPIRACY, PERJURY. UNQUOTE. THE ORIGINAL STATEMENT RETAINED BY USA. BUREAU ENCLOSED COPY OF MEMO, JUNE SEVEN, THIRTY FIVE, GIVING FURTHER DETAILS OF SCAFFA CASE. ALSO ENCLOSED COPY OF REPORT OF SA [redacted] DATED OCTOBER TWENTY SIX, b7C FORTY FOUR, AT NYC, ENTITLED QUOTE FRANK COSTELLO, ET AL, MISCELLANEOUS INFORMATION CONCERNING, UNQUOTE, RELATING TO COSTELLO UP TO NINETEEN FORTY FOUR. THE ORIGINAL AND COPY OF FBI LABORATORY REPORT FEBRUARY NINE, FIFTY THREE, TO INS, WASHINGTON, D.C., RE FRANK COSTELLO CANCELLATION OF CITIZENSHIP, STATED THAT THE PHOTOGRAPHS OF SIGNATURES OF FRANK A. GOSS AND HARRY C. SAUSSER, WITNESSES ON PETITION FOR CITIZENSHIP OF COSTELLO HAD BEEN EXAMINED BUT A DEFINITE CONCLUSION NOT REACHED WHETHER GOSS AND SAUSSER SIGNATURES WERE WRITTEN BY SAME PERSON. ONE EACH OF INS, NYC FORM LETTER G DASH FIFTY

NINE DATED DECEMBER EIGHT, FORTY SEVEN TO BUREAU REQUESTED INFORMATIO[redacted]

b7C [redacted] MEMO, NOVEMBER ELEVEN, FIFTY, FROM BUREAU TO COMMISSIONER INS ENCLOSED COPY OF LETTER FROM [redacted] REFERRED TO b7C BUREAU BY [redacted] WHICH LETTER REFERRED TO DEPORTATION MATTER CONCERNING COSTELLO. MEMO, MAY THREE, FORTY SEVEN TO COMMISSIONER INS, PHILADELPHIA FROM BUREAU, OUTLINED ARRESTS OF COSTELLO UNDER FBI NUMBER NINE THREE SIX TWO ONE SEVEN. LETTER, DECEMBER THIRTEEN, FIFTY TWO TO BUREAU FROM [redacted]

b7C, D

PAGE FIVE

[redacted] LETTER, JANUARY TWENTY SEVEN, FIFTY THREE FROM BUREAU TO DEPUTY ATTORNEY GENERAL ATTENTION J.T. DONEGAN RE ATTORNEY GENERAL-S DENATURALIZATION AND DEPORTATION PROGRAM, ENCLOSED COPY OF LETTER DECEMBER THIRTEEN, FIFTY TWO FROM [redacted] LETTER STATED THIS INFORMATION WAS BEING FURNISHED. LETTER, JANUARY TWENTY SEVEN, FIFTY THREE TO [redacted] MENTIONED ABOVE, FROM BUREAU, TRANSMITTED COPY OF IDENTIFICATION DIVISION RECORD OF COSTELLO UNDER FBI NUMBER NINE THREE SIX TWO ONE SEVEN. THE BUREAU-S ATTENTION IS CALLED TO THE FACT THAT ONE OF ABOVE COMMUNICATIONS REFERS TO REPORTS OF SAS [redacted] WHICH REPORTS MIGHT POSSIBLY BE REQUESTED TO BE PRODUCED IF NOTICED BY JUDGE, HOWEVER, AGENT [redacted] INS, STATED THESE REPORTS ARE NOT A PART OF THE INS

END PAGE FIVE

FILE IN OFFICE OF USA BUT ARE RETAINED SEPARATELY IN THE NY INS OFFICE. BASED UPON REQUEST CONTACT MADE WITH AUSA ROBESON CHIEF CIVIL DIVISION, SDNY, AS TO REASON FOR REQUEST. HE STATED IN LAST TRIAL OF COSTELLO DEFENSE ASKED FOR PRODUCTION OF INS RECORDS BASED UPON CLAIM THAT CASE BASED ON WIRE TAP INFORMATION. JUDGE REQUESTED INS FILE FOR EXAMINATION WHICH USA, SDNY, REFUSED TO PRODUCE. CLAIMS ONLY DESIRE FOR DECLASSIFYING INFORMATION IN FILE NOW IS THAT IF SITUATION SHOULD AGAIN ARISE THAT FILE SHOULD BE GIVEN TO THE JUDGE. IT WOULD APPEAR THAT CLASSIFICATION OF CONFIDENTIAL CONTAINED ON THESE COMMUNICATIONS DO NOT RELATE TO PRESENT CLASSIFICATION STANDARDS WHICH HAVE BEEN ESTABLISHED SINCE DISSEMINATION MADE. BUREAU REQUESTED TO ADVISE FOR INFORMATION OF USA, SDNY.

END AND ACK PLS

NY R 3 WA CS

DO: MR. ROSEN
AND SUPERVISOR
INVESTIGATIVE DIVISION

cc- Trotter

December 8, 1958

REC-82 92-2869-72

AIRTEL

EX-101

To: SAC, New York

From: Director, FBI (92-2869)

FRANK COSTELLO, aka.
ANTI-RACKETEERING

[redacted] b7C

Reurtel 12/5/58.

Material in possession INS and U.S. Attorney's Office per retel marked "Confidential" may be declassified.

NOTE:

Retel advises denaturalization proceedings re Costello scheduled to begin SDNY on 12/10/58. AUSA anticipates court may desire to examine INS file if defense alleges wire tapping may be involved in preparation INS case. Some of material in INS file consists of information disseminated by FBI and marked "Confidential" prior to time of present standards of classifying information.

[redacted] b7C

(4)

DEC 8 5 25 PM '58

COMM-FBI
DEC 8 1958
MAILED 20

[redacted] b7C

[redacted] b7C

[redacted] b7C

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

66 DEC 19 1958

MAIL ROOM

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO: DIRECTOR, FBI (92-2869) DATE: 4/1/60

FROM: SAC, WFO (92-649)

SUBJECT: FRANK COSTELLO, aka
ANTI-RACKETEERING
(OO: NY)

b7C

On 3/31/60 a review of the U. S. Supreme Court (USSC) Docket reflected that on 3/18/60 a Petition for a Writ of Certiorari was filed in the USSC in the case entitled "FRANK COSTELLO, Petitioner, v. United States of America." This matter is entered as Number 802 appellate of the October term, 1959, of the USSC.

b7C

[redacted] Clerk's Office, USSC, made available a copy of the Petition for a Writ of Certiorari which is being enclosed for the information of the Bureau. It is noted that the Counsel for Petitioner COSTELLO are EDWARD BENNETT WILLIAMS, AGNES A. NEILL, VINCENT J. FULLER, 1000 Hill Building, Washington 6, D. C., and MORRIS SHILENSKY, 120 Broadway, New York 5, New York.

b7C

[redacted] informed that the Solicitor General has thirty days from 3/18/60 to file a brief in opposition to the Petition for a Writ of Certiorari filed by COSTELLO. As the Bureau has arranged to secure briefs filed with the USSC by the Solicitor General's Office, no effort will be made by the WFO to secure briefs filed by the Solicitor General.

1cc filed with Board

This matter will be followed with the USSC by the WFO.

b7C

(2) - Bureau (ENCL. 1)
2 - New York (92-649)
1 - WFO
[redacted] (5)

b7C

ENCL. ATTACHED

REC-35 92-2869-73

9 APR 5 1960

ENCLOSURE [redacted] b7C EX-135

b7C

APR 13 1960

E 157

ENCLOSURE TO BUREAU (1)

One copy of a Petition for a
Writ of Certiorari
FRANK COSTELLO
ANTI-RACKETEERING
WFOfile 92-649

By memo dated 4/1/60



92-2869-73

ENCLOSURE

Office-Supreme Court, U.S.
FILED
MAR 18 1960
JAMES R. BROWNING, Clerk

No. 802

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

FRANK COSTELLO, *Petitioner,*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWARD BENNETT WILLIAMS,
AGNES A. NEILL,
VINCENT J. FULLER,
1000 Hill Building
Washington 6, D. C.

MORRIS SHILENSKY,
120 Broadway,
New York 5, New York,
Counsel for Petitioner.

HAYS, ST. JOHN, ABRAMSON & HEILBRON,
120 Broadway,
New York 5, New York,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

FRANK COSTELLO, *Petitioner,*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit which affirmed a decree of denaturalization entered by the United States District Court for the Southern District of New York.

OPINIONS BELOW

The opinion of the District Court is reported at 171 F. Supp. 10 (R. 17-43). The opinion of the Court of Appeals has not yet been reported (App. 2a).

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Questions Presented	2
Statute Involved	2
Statement	3
Reasons for Granting the Writ	6
Conclusion	13
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Judgment	1a
Opinion	2a

CITATIONS

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Benanti v. United States, 355 U.S. 96	4
Chaunt v. United States, No. 593, October Term, 1959	6
Guaranty Trust Co. v. United States, 304 U.S. 126	11
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Polites v. United States, No. 631, October Term, 1959	6
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STATUTES:

28 U.S.C. § 1254	2
Immigration and Naturalization Act of 1906, § 15, 34 Stat. 601	10, 12
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

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OPINIONS BELOW

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JURISDICTION

The judgment of the Court of Appeals was entered on February 17, 1960 (App. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner can be denaturalized for representing that his occupation was "real estate" when he was concededly engaged in the real estate business and the government's inquiry could reasonably be interpreted as calling for no more than his legal occupation.

2. Whether the Court is entitled to draw any inference from petitioner's failure to take the stand in a denaturalization case.

3. Whether due process permits denaturalization where citizenship was granted thirty-three years prior to the institution of suit, the facts alleged as a basis for denaturalization were known to the government thirty-two years prior to the institution of suit, and many material witnesses have become unavailable by reason of death.

4. Whether a decree of denaturalization may rest in part upon evidence tainted by wiretapping.

STATUTE INVOLVED

Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260:

> "(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively; PROVIDED, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence."

STATEMENT

Petitioner came to the United States from Italy in 1895, when he was four years old. He was admitted to citizenship by the United States District Court for the Southern District of New York in 1925.

This case represents the government's second attempt to revoke petitioner's citizenship. On October 22, 1952, it filed a complaint seeking his denaturalization

under § 338 of the Nationality Act of 1940, 54 Stat. 1158. Pretrial motions to dismiss on the ground that the affidavit of good cause should have been filed contemporaneously with the complaint were denied. 142 F. Supp. 290, 325. On the fourth day of trial, however, Judge Palmieri granted petitioner's motion to dismiss on the ground that both the affidavit of good cause and the government's evidence at trial were extensively tainted by wiretapping. 145 F. Supp. 892. The Court of Appeals reversed, holding that evidence derived from wiretapping by state officers is admissible in the federal courts and alternatively that the trial court should have afforded the government an opportunity to file a new affidavit of good cause and to demonstrate that it had sufficient untainted evidence at trial.[1] 247 F. 2d 384. On April 7, 1958, this Court granted certiorari and reversed with directions to dismiss the complaint, on the ground that the affidavit of good cause should have been filed contemporaneously with the complaint. 356 U.S. 256.

On May 1, 1958, the government filed a new complaint seeking petitioner's denaturalization under § 340 of the Immigration and Nationality Act of 1952, 66 Stat. 260 (R. 3-14). Factually the allegations of this complaint are very similar to the allegations of the prior complaint. It alleged that petitioner procured his citizenship by wilful misrepresentation in that: (a) he stated that his occupation was real estate, whereas in truth and in fact his occupation was the illicit purchase and sale of alcohol; (b) he stated that Harry C. Sausser, one of his naturalization witnesses, was in the real estate business and had personal knowledge of

[1] This opinion was handed down prior to the decision in *Benanti v. United States*, 355 U.S. 96.

his good moral character, whereas in truth and in fact Sausser was engaged with him in the illicit purchase and sale of alcohol; (c) he stated that the only other name he had ever used was Francisco Castiglia, whereas he had also used the names Frank Stello and Frank Saverio; (d) he stated that he would support and defend the Constitution and laws of the United States and that he would bear true faith and allegiance to the same, whereas he was then violating both federal and state laws relating to alcohol and income tax and intended to continue so to do; and (e) he stated that he had never been arrested or convicted whereas he had been arrested four times and convicted of unlawful possession of a firearm. The complaint further alleged that petitioner procured his citizenship by concealment of a material fact, in that he concealed the fact that Sausser was engaged with him in the illicit purchase and sale of alcohol and knew him to be a person of bad moral character.

This case came on for trial before Judge Dawson, who found that the government had sustained its allegations relating to petitioner's occupation and allegiance (allegations (a) and (d) *supra*). Judgment was accordingly entered revoking petitioner's naturalization (R. 43-44). Judge Dawson stated that he was not convinced that any of the government's other allegations had been established by the degree of proof requisite in an action of this nature (R. 29).

Judge Dawson relied heavily upon certain statements made by petitioner to New York state authorities in 1943 to support his finding that petitioner's true occupation at the time of his naturalization was bootlegging (R. 23-25). Judge Palmieri had previously ruled that these statements were extensively infected with wire-

tapping. 145 F. Supp. 892. Judge Dawson, however, reached a contrary conclusion and held that they were admissible (R. 39-42).

The Court of Appeals affirmed on February 17, 1960. It concluded that petitioner was guilty of wilful misrepresentation when he stated that his occupation was "real estate". The opinion concedes, however, that petitioner was associated with a real estate company of which he later became president and that the government's inquiry as to occupation could have been construed as calling for no more than his legal occupation (App. 7a-8a).

The Court of Appeals was not satisfied that petitioner's oath of allegiance sustained a finding of fraud (App. 9a). It expressly declined to pass upon any of the other allegations of the complaint, which were not relied upon by the trial court (App. 6a). Nor did it pass upon the admissibility of petitioner's statements to New York state authorities.

REASONS FOR GRANTING THE WRIT

1. The decision of the courts below is completely inconsistent with this Court's decisions in *Nowak* v. *United States,* 356 U.S. 660, and *Maisenberg* v. *United States,* 356 U.S. 670. In two cases now pending this Court granted certiorari to determine whether the lower courts properly applied the standards laid down in these decisions, and petitioner submits that the same course should be followed here. Cf. *Chaunt* v. *United States,* No. 593, October Term, 1959, and *Polites* v. *United States,* No. 631, October Term, 1959.

In the *Nowak* and *Maisenberg* cases, petitioners were asked whether they believed in anarchy or belonged to

any organization which taught or advocated anarchy or the overthrow of existing government in this country. In fact, they were not members of any anarchistic organization but they were members of the Communist Party. This Court held that they could not be denaturalized for answering the question in the negative, because they might reasonably have interpreted it as referring solely to anarchistic organizations.

Precisely the same situation is presented in this case. Petitioner was asked to state his "occupation" in May of 1925 and again in September of 1925. The record establishes and the Court of Appeals concedes that he was then associated with the Koslo Realty Corporation and that he subsequently became president of this corporation (App. 7a-8a). The Court of Appeals referred to a real estate transaction which was concluded by the Koslo Realty Corporation in June of 1925, one month after petitioner filed his preliminary form for naturalization and three months before he was formally admitted to citizenship (App. 7a-8a).[2] The record also contains uncontradicted documentary evidence of two other real estate transactions handled by Koslo Realty Corporation during this period.[3]

[2] The record shows that Koslo Realty Corporation purchased certain property in New York City on December 1, 1924, and sold it on June 22, 1925 (R. 206-208, 223-224). A purchase money mortgage in the amount of $41,230.00 was released on December 21, 1925 (R. 225-226). Petitioner signed this release as president of Koslo Realty Corporation. The government introduced sworn testimony by petitioner to the effect that he realized a profit of $25,000.00 on this transaction (R. 188-189). This sum was substantially in excess of petitioner's average annual income during the years 1919-1932 (R. 185-189).

[3] The record shows that Koslo Realty Corporation purchased three parcels of grounds in the Bronx on August 12, 1925, and sold them to the Rosenblum Realty Corporation on June 22, 1926

The Court of Appeals further found that petitioner could have interpreted the government's inquiry as relating to his legal occupation (App. 8a). Under these circumstances, petitioner could not be guilty of wilful misrepresentation when he answered "real estate".

The contrary conclusion of the court below is inexplicable in the light of *United States* v. *Profaci*, decided by another panel of the Second Circuit on January 12, 1960. There the defendant stated at the time of his naturalization that he had never been arrested, although he actually had a criminal record in Italy. The Court of Appeals reversed a decree of denaturalization on the ground that he could reasonably have interpreted the government's inquiry as relating solely to arrests in the United States, relying upon the *Nowak* and *Maisenberg* decisions.

Here the Court of Appeals endeavored to support its finding of wilful misrepresentation by stating: "We think it obvious that a worldly-wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but 'dust in the eyes' to conceal his real occupation" (App. 8a). The serious issue presented by this case, however, cannot be avoided by characterizing petitioner as "worldly-wise" and his real estate activities as "dabbling". If this Court is to give meaning and effect to the *Nowak* and *Maisenberg* decisions, it should review this case to determine whether the decision of the courts below is consistent with them. The grant of certiorari in two somewhat similar cases makes it particularly appropriate to grant certiorari in this case.

(R. 209-212, 231-232). The record further shows that Koslo Realty Corporation purchased several pieces of ground in the Bronx from the Claire Building Corporation on October 26, 1925, giving back purchase money mortgages in the amount of $70,000 (R. 213-216). On July 15, 1926, Koslo Realty Corporation deeded this land, with the buildings and improvements thereon, to the R.G. & F. Construction Corporation, subject to mortgages aggregating $310,000 and also subject "to present leasings, lettings and tenancies" (R. 227-230). It is apparent that a large office building or apartment was constructed on this property while it was owned by Koslo Realty Corporation.

2. Petitioner did not elect to take the stand on his own behalf and the government did not call him as a witness. The Court of Appeals concluded that "the district court, though it did not do so, might properly have buttressed its findings by the unfavorable inferences to be drawn from the fact that Costello chose to remain off the witness stand" (App. 5a). It ruled that petitioner had no privilege to remain silent because he was not a criminal defendant, citing its prior decision in *United States* v. *Matles*, 247 F. 2d 378, reversed on other grounds, 356 U.S. 256.

The Court of Appeals then proceeded to do what the District Court had not done. It stated that petitioner's failure to produce evidence of other real estate transactions by the Koslo Realty Corporation warranted the inference that there were none such (App. 8a). It went on to state that while an applicant for citizenship might believe he was bound to disclose only his legal occupation, there was no evidence that petitioner so believed (App. 8a). In other words, it concluded that petitioner's failure to take the stand warrants the inference that *he* understood the government's question as calling for disclosure of all income-producing activities, legal or illegal, although the question was plainly susceptible of a more restricted interpretation.

Here again, the Court of Appeals followed a course squarely contrary to the *Nowak* and *Maisenberg* decisions. In *Nowak* the trial court specifically referred to defendant's failure to take the stand in support of its denaturalization decree. 133 F. Supp. 191, 196. This Court, however, refused to infer from Nowak's silence that he must have understood the crucial question as referring to membership in the Communist Party.[4] Absent any evidence as to how Nowak actually understood the question, this Court resolved the ambiguity in his favor.

The right of a denaturalization defendant to stand silent has been considered in two other cases. In the first denaturalization proceedings against petitioner, he was compelled to take the stand over his objection. Judge Palmieri filed an opinion, however, stating that he was in agreement with petitioner's assertion of privilege under the Fifth Amendment and was overruling it only to provide an adequate record for appellate review. 144 F. Supp. 779.

Likewise, Chief Judge Clark expressed grave doubts in *Matles* as to the propriety of compelling a defendant

[4] The opinion states, 356 U.S. at 665, footnote 3:

> "No evidence was introduced tending to show that Nowak actually understood Question 28 as calling for disclosure of his membership in the Communist Party. The Government argues that the requisite understanding of the question should be imputed to Nowak, 'an important functionary in the Party, and an intelligent man,' because of the fact that for some period prior to 1937 the deportation and exclusion statutes applied to aliens 'who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law'. Act of October 16, 1918, 40 Stat. 1012. The gap in the Government's proof cannot be filled in such tenuous fashion, especially in view of the citizenship provisions of the Nationality Act of 1906 referred to in the text."

to denaturalize himself. He concluded that "this important issue must of course await final settlement by the Supreme Court." 247 F. 2d at 382. This Court, however, did not reach the issue because it ordered dismissal of the proceedings on the ground that the affidavit of good cause had not been timely filed. 356 U.S. 256.

The issue thus left unresolved in *Matles* is again raised in this case. If it was definitively resolved in *Nowak*, this case was wrongly decided. If it was not definitively resolved in *Nowak*, it should be resolved now. In either event this Court should grant certiorari.

3. The Court of Appeals dismissed from consideration the long delay between naturalization and denaturalization in the opening paragraph of its opinion. It pointed out that this is "another of those troublesome denaturalization cases, instituted by the government in an effort to have the court cancel a certificate of naturalization issued over thirty years ago" (App. 3a). It further pointed out, however, that there was no applicable statute of limitations, and it regarded independent consideration of the defense of laches as foreclosed by *United States* v. *Summerlin*, 310 U.S. 414, 416.

Summerlin, however, was not a denaturalization case. It is well settled that sovereign immunity from laches is based upon public policy and will be recognized only when such immunity serves public policy. *Guaranty Trust Co.* v. *United States*, 304 U.S. 126. The increasing frequency of attacks upon old certificates of naturalization and the resulting hardship upon naturalized citizens require this Court to determine whether such attacks are consistent with due process.

Here petitioner was admitted to citizenship in the Southern District of New York in 1925. He was indicted in this same district for conspiracy to violate the prohibition laws in 1926. The jury was unable to reach an agreement and subsequently the case was dismissed on motion of the prosecution. Petitioner testified at length before a federal grand jury for this same district in 1939, and there was again evidence of alleged prohibition violations on his part.

Under the applicable statutes, it was the duty of the United States Attorney to institute denaturalization proceedings against petitioner if in fact such conduct constituted "good cause" therefor.[5] Instead, the United States Attorney waited for twenty-seven years after petitioner's indictment and thirteen years after his grand jury testimony before instituting denaturalization proceedings based upon his alleged prohibition violations. In the meantime, the naturalization examiners who processed petitioner's application, the witnesses who testified on his behalf, and the judge who admitted him to citizenship have all died.

The Court of Appeals recognized the harshness of decreeing denaturalization under these circumstances (App. 3a). Petitioner urges that due process does not permit revocation of citizenship granted more than three decades ago on the basis of alleged misrepresentations known to the government for more than three decades. This Court should grant certiorari to determine this grave question, since the lower federal courts consider it foreclosed by the *Summerlin* decision.

4. Both the trial court and the Court of Appeals relied heavily upon certain statements by petitioner to

[5] Immigration and Naturalization Act of 1906, § 15, 34 Stat. 601.

support their finding that his true occupation was bootlegging. It is petitioner's position that these statements must be excluded from consideration in determining the sufficiency of the government's proof, because they are extensively infected with wiretapping. In order to determine whether the government's proof complies with the standards laid down in *Nowak* and *Maisenberg*, it may become necessary to resolve the admissibility of this evidence. In order to avoid any possible claim that its admissibility is not fairly comprised within the first question presented by the petition for certiorari, petitioner presents the admissibility of this evidence as a separate question.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

EDWARD BENNETT WILLIAMS,
MORRIS SHILENSKY,
AGNES A. NEILL,
VINCENT J. FULLER,
Counsel for Petitioner.

March, 1960.

APPENDIX

APPENDIX

Judgment

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventeenth day of February, one thousand nine hundred and sixty.

Present:

HON. CALVERT MAGRUDER,
HON. LEONARD P. MOORE,
HON. HENRY J. FRIENDLY,
Circuit Judges

UNITED STATES OF AMERICA, *Plaintiff-Appellee*

v.

FRANK COSTELLO, *Defendant-Appellant*

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 58—October Term, 1959.

(Argued November 17, 1959 Decided February 17, 1960.)

Docket No. 25690

UNITED STATES OF AMERICA, *Appellee*,

—v.—

FRANK COSTELLO, *Appellant*.

Before: MAGRUDER, MOORE and FRIENDLY, *Circuit Judges*.

Appeal from a decree of the United States District Court for the Southern District of New York, Archie Owen Dawson, *Judge*, revoking citizenship, pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1451(a), as amended, 68 Stat. 1232, on the ground that citizenship certificate was obtained willful misrepresentations. 171 F. Supp. 10. *Affirmed*.

EDWARD BENNETT WILLIAMS, Washington, D. C. (Agnes A. Neill and Vincent J. Fuller, Washington, D. C., Morris Shilensky, New York, N. Y., and Hays, St. John, Abramson & Heilbron, New York, N. Y., on the brief), *for appellant*.

MORTON S. ROBSON, Asst. U. S. Atty., Southern District of New York, New York, N. Y. (S. Hazard Gillespie, Jr., U. S. Atty., S. D. N. Y., New York, N. Y., on the brief), *for appellee*.

MAGRUDER, *Circuit Judge:*

This is another of those troublesome denaturalization cases, instituted by the government in an effort to have the court cancel a certificate of naturalization issued over thirty years ago. The proceeding is brought pursuant to § 340(a) of the Immigration and Nationality Act of 1952, as amended, 68 Stat. 1232. This statute contains no provision for limitations, nor is there any other federal statute applicable to the case. And, as Hughes, *C.J.*, said in *United States* v. *Summerlin*, 310 U. S. 414, 416 (1940): "It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights."

It is impossible to say that the statutory provisions for the issuance by the court of naturalization certificates, under certain prescribed conditions, do not constitute a proper judicial function. *Tutun* v. *United States*, 270 U. S. 568 (1926). And despite what may seem to be the harshness of the result, it seems impossible to say that the Congress cannot constitutionally provide a proceeding for the cancellation of a certificate obtained by fraud or concealment. *Knauer* v. *United States*, 328 U. S. 654, 673 (1946). It was so provided way back in the Act of 1906 which, in § 15 thereof, vested jurisdiction in the district courts of suits by the United States Attorney on behalf of the United States "for the purpose of setting aside and canceling a certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." 34 Stat. 601. See *Johannessen* v. *United States*, 225 U. S. 227 (1912). Such provision for denaturalization was carried forward by Congress into § 338(a) of the Nationality Act of 1940 (54 Stat. 1158-59). In the Immigration and Nationality Act passed in 1952, denaturalization proceedings were also provided for, but the Congress struck out the earlier provision for cancellation of a certificate that had been illegally issued, and confined cancellation to cases where the certificate had been procured "by

concealment of a material fact or by willful misrepresentation." 66 Stat. 260. This provision was reenacted by the Congress in 1954. 68 Stat. 1232.

The Supreme Court has never told us that a denaturalization proceeding partakes of the character of a criminal proceeding. Indeed, in the *Johannessen* case, *supra*, the Court upheld the constitutional validity of a provision in § 15 of the Act of 1906 to the effect that the denaturalization provisions should apply not only prospectively but also "to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws." 34 Stat. 601. In this connection the Court said (225 U. S. at 242): "It is, however, settled that this prohibition is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description. * * * The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges."

Although the Supreme Court has many times upheld a decree for the cancellation of a certificate of naturalization, it has prescribed an exacting quantum of proof as requisite to establishing a case by the government against a certificate holder. The case for cancellation must be "clear, unequivocal, and convincing," and should not leave "the issue in doubt." See *Schneiderman* v. *United States*, 320 U. S. 118, 158 (1943); *Baumgartner* v. *United States*, 322 U. S. 665 (1944); *Knauer* v. *United States*, *supra*, 328 U. S. 654 (1946).

If a denaturalization case is a sort of civil proceeding, we are at a loss to see why our scope of review is not limited by the "clearly erroneous" test of the unqualified Rule 52(a) of the Federal Rules of Civil Procedure. If that is so, then once we are convinced that the district court was aware of and applied the proper strict standards of proof—which clearly appears in the case at bar—we ought not to upset

its finding that the defendant had obtained his certificate of citizenship by fraud unless we are satisfied that such finding was "clearly erroneous." See *Corrado* v. *United States*, 227 F. 2d 780, 783 (C. A. 6th, 1955). Of course, fraud is an internal state of mind, and it is possible that a man may give an incorrect answer to a question in a bona fide but mistaken belief as to what the question calls for. But if an applicant for citizenship has in fact no such misapprehension as to what answer the question calls for, and consciously falsifies an answer on a material point, he is certainly guilty of fraud in the baldest sense of the term. The district court believed that Costello was guilty of this kind of fraud, and we certainly cannot say that the finding to this effect was "clearly erroneous."

On the other hand, perhaps we are wrong about our limited scope of review; and it may be that in this very special type of civil proceeding we have a broader power of review, and are under the obligation ourselves to scrutinize the evidence, to satisfy ourselves that the proof offered by the government was "clear, unequivocal, and convincing." See *Baumgartner* v. *United States*, *supra*, 322 U. S. 665, 670-72 (1944); *Brenci* v. *United States*, 175 F. 2d 90 (C. A. 1st, 1949); *Cufari* v. *United States*, 217 F. 2d 404 (C. A. 1st, 1954).

Fortunately, we do not in this case have to determine what our scope of review may be in these cases since we are here more than satisfied that the findings by the district court which will sustain a cancellation of the certificate of naturalization are the only findings possible on the evidence, and that they fulfill the strictest requirements of proof. 171 F. Supp. 10.

We think the district court, though it did not do so, might properly have buttressed its findings by the unfavorable inferences to be drawn from the fact that Costello chose to remain off the witness stand and to introduce no evidence in answer to the government's case indicating fraud. The matters inquired into were within Costello's peculiar knowl-

edge. Since Costello was not a criminal defendant in the present proceedings, he had no privilege to remain silent. *United States* v. *Matles*, 247 F. 2d 378 (C. A. 2d, 1957), rev'd on other grounds 356 U. S. 256 (1958). See also *Vajtauer* v. *Commissioner*, 273 U.S. 103 (1927).

The government's complaint in the present case was filed May 1, 1958. In compliance with the procedural requirement of § 340(a), as amended, the complaint was accompanied by affidavits showing "good cause" for the institution of the proceeding. 68 Stat. 1232. The request for cancellation of the certificate of naturalization was based upon various allegations of fraud and concealment. We mean to be guided by the words of the Supreme Court in the *Schneiderman* case, *supra*, 320 U. S. at 160: "A denaturalization suit is not a criminal proceeding. But neither is it an ordinary civil action since it involves an important adjudication of status. Consequently we think the Government should be limited, as in a criminal proceeding, to the matters charged in its complaint."

Some of the allegations of fact contained in the complaint were not accepted by the district court as sufficiently established pursuant to the strict requirements of proof imposed upon the government. Though the government now urges us to examine the state of the evidence in these regards, we do not propose to go beyond the findings of fact by the district court. That court based its decree upon findings with reference to two of the issues raised by the complaint: (1) That in the preliminary form for petition for naturalization, and in testimony under oath before a naturalization examiner, and also in his petition for naturalization, Costello knowingly and willfully stated that his occupation was "real estate," whereas in truth his occupation was the illicit purchase and sale of alcoholic beverages; (2) that the defendant swore in his oath of allegiance, on September 10, 1925, that "I will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and that I will bear true faith and allegiance

to the same." This was said to be a known falsehood because the defendant was actually engaged at the time in a course of activity which flouted the Constitution and was designed to violate the laws of the United States.

It was established by the United States, from Costello's own mouth, that he was at the crucial dates engaged in bootlegging activities. He gave a statement to Special Agent Sullivan on July 24, 1938, to the effect that he was involved in the liquor business from 1923 or 1924 until a year or two before repeal of the Eighteenth Amendment. In answer to questions by the district attorney in a proceeding before a New York County grand jury in 1943, Costello admitted that he got large sums of money from importing whisky during prohibition days. He admitted that he had reported to the state taxing authorities that for the years 1919 to 1932 his income had totaled $305,000, most of it made in the bootlegging business. If corroboration of these statements is required in the present case, such corroboration is amply found in the testimony of the witnesses Kessler, Kelly and Coffey. The evidence is clear beyond any doubt that during prohibition days Costello's major activity, both in terms of time spent and revenue obtained, was bootlegging.

In his preliminary form for petition for naturalization, in answer to a question requiring him to put down his "present occupation," he answered "real estate." He gave a similar answer in his petition for naturalization.

Of course one has to begin a new occupation at some point of time, and at the outset there necessarily is not a great deal of evidence as to such activity. The evidence relating to Costello's real estate dealings is at best scanty. The government made a check of the real estate records in four counties of Greater New York, which check revealed that Koslo Realty Co., Inc., was organized on December 1, 1924; that some time prior to May 1, 1925, Costello was associated with this corporation. Koslo Realty Co. purchased a piece of property and sold the same on June 22,

1925. Costello later became president of the corporation. How much activity Costello had to expend in this capacity does not appear, nor does it appear whether or not Koslo Realty Co. was engaged in other real estate transactions in other parts of the country not covered by the government's spot check. If there was any further evidence along this line, it would be peculiarly within the knowledge of Costello, and his failure to produce evidence of such activity warrants the inference that there was none such.

We think it obvious that a worldly-wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but "dust in the eyes" to conceal his real occupation. As the district judge stated: "If a man in that situation had been honest when asked what his occupation was, would he have answered 'real estate'? If he had told the truth he probably would not have been naturalized, but this is no excuse for his using fraud and deceit to secure his naturalization." The term "occupation," the court said, "would commonly be understood to refer to income producing activity to which a person devotes the major portion of his time and from which he derives the greater portion of his income." 171 F. Supp. at 18. Surely it is conceivable that an applicant might believe that the answer called for no more than a disclosure of some "legal occupation." There is no evidence in the record that Costello so believed. If he had given a truthful answer, it is probable that the court would not readily have accepted his assertion of being possessed of "good moral character," and he might not have received his certificate of naturalization. As the district court said: "When he answered that his occupation was real estate he was giving a false and misleading answer and was therefore engaged in a willful misrepresentation in order to secure his naturalization certificate." 171 F. Supp. at 18.

The district court also based its holding upon a finding that Costello falsely swore that he would "support and

defend the Constitution" and "bear true faith and allegiance to the same."

Costello also swore that he was "attached to the principles of the Constitution." Just what this phrase might mean as used in the Nationality Act poses a question of some difficulty. See *Stasiukevich* v. *Nicolls*, 168 F. 2d 474, 477 (C. A. 1st, 1948). We don't believe that the phrase would require a person to believe in the soundness of the Eighteenth Amendment; but at least it would seem to require that the applicant should support an existing provision of the Constitution unless and until it is repealed in an orderly way as provided in Art. V of the Constitution. Therefore, if Costello was at the time engaged in violation of the Eighteenth Amendment and of the Volstead Law, it seems hard to say that he was "attached to the principles of the Constitution."

But the answer to all the foregoing is that the complaint in the present case does not charge that Costello swore falsely in affirming that he was "attached to the principles of the Constitution."

We are not satisfied that the district court was correct in ruling that the oath to "support and defend the Constitution and laws of the United States" means the same as "attached to the principles of the Constitution." It may be urged that the oath which Costello was charged with having violated was merely a political oath calling for a repudiation of allegiance to King Victor Emmanuel III and a statement of allegiance to the United States. We do not have to pass finally on this alleged fraud in the oath, since the first allegation, with reference to the statement of Costello's occupation, is amply supported so as to sustain the charge of fraud and to require us to uphold the decree of denaturalization.

There is only one further point made by appellant that deserves some extended comment. It has to do with the validity of the affirmative defense, specifically pleaded here, that "the complaint is barred under principles of

res judicata." We think there is nothing to the point; in fact, we cannot see how any court could accept the argument advanced by appellant except upon an invincible determination to frustrate finally what the court might regard as an undesirable effort by the government to accomplish the cancellation of an old certificate of naturalization.

This is not the first effort by the government to obtain the cancellation of Costello's certificate. On October 22, 1952, the district attorney filed a denaturalization complaint against Costello under § 338 of the Nationality Act of 1940 (54 Stat. 1158). The allegations of fraud were about the same as in the present complaint. But as then permitted by law, cancellation of the certificate of naturalization was also sought on the ground that the certificate was "illegally procured"; that is to say, that the conditions precedent to naturalization, a "good moral character" and an attachment "to the principles of the Constitution," did not in fact exist. As we have previously stated, the latter ground of cancellation was omitted from the present Act.

Though the United States Attorney filed an affidavit of "good cause" prior to the trial of that earlier action, he failed to submit this affidavit simultaneously with the filing of the complaint. The district court entered an order dismissing the complaint "without prejudice." 145 F. Supp. 892 (S. D. N. Y. 1956). The court of appeals reversed, in an opinion having to do solely with so-called "wire tap" evidence. *United States* v. *Costello*, 247 F. 2d 384 (C. A. 2d, 1957). Upon certiorari the Supreme Court, in a one-paragraph *per curiam* opinion, reversed the judgment of the court of appeals upon a ground not theretofore considered by that court, namely, that an affidavit showing good cause is a prerequisite to the initiation of denaturalization proceedings and must be filed along with the complaint when the proceedings are instituted, citing only *United States* v. *Zucca*, 351 U. S. 91 (1956). Accordingly the Supreme Court remanded the case to the district court with directions to dismiss the complaint. 356 U. S. 256 (1958).

When the case got back to the district court, since nothing was said in the Supreme Court mandate about whether the dismissal should be with or without prejudice, the district judge considered that he was bound by the terms of the mandate merely to dismiss the complaint.

There may have been an error by the district court in its refusal to add the words, proposed by the government, that the dismissal of the complaint should be "without prejudice." However, this error, if it was an error, could have been corrected on appeal, and no appeal was taken from the district court's order of dismissal.

In Rule 41(b) of the Federal Rules of Civil Procedure it is provided as follows: "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits."

Rule 41(b) does not state what the effect of a prior judgment on the merits is, but if the dismissal of the earlier complaint was really a judgment on the merits we suppose that that would preclude the government as well as a private litigant from filing another complaint based upon the same cause of action, under principles of *res judicata*.

The district court was persuaded by the government's argument that Rule 41(b) had no application because the dismissal was "for lack of jurisdiction" within the meaning of the rule.

No doubt the word "jurisdiction" is a somewhat slippery one, susceptible of various meanings. In holding, as we do, that Rule 41(b) has no application, we prefer not to say that the district court lacked "jurisdiction" to determine the denaturalization complaint despite the lack of a "procedural prerequisite," namely, the filing of an affidavit showing "good cause" simultaneously with the filing of the complaint. Because the phrase "lack of jurisdiction" is used in immediate conjunction with the phrase "for im-

proper venue," it would be plausible to argue that the word "jurisdiction" is used in the rule in its usual restricted sense. See *Title* v. *United States*, 263 F. 2d 28 (C. A. 9th, 1959).

In striking out the words "without prejudice," as proposed by the government, the district court exercised no discretion, as contemplated in the rule, but merely conceived that it was bound by the mandate of the Supreme Court to dismiss the complaint without saying anything about whether it should be with or without prejudice.

The district court did not determine that its dismissal should be regarded as a judgment on the merits. It made no findings as provided in the sentence of Rule 41(b) saying that, "If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a)." And it is obvious that the Supreme Court, in directing such dismissal, did not suppose that it was directing a determination on the merits, which would preclude the government from starting over again, with this particular statutory "procedural prerequisite" duly observed. In the only case cited by the Supreme Court in its brief *per curiam* opinion, *United States* v. *Zucca*, *supra*, 351 U. S. 91 (1956), the district court had dismissed a complaint for denaturalization, without prejudice to the government's right to institute an action to denaturalize the respondent upon filing an affidavit of good cause. 125 F. Supp. 551 (S. D. N. Y. 1954). The court of appeals affirmed the dismissal (221 F. 2d 805 (C. A. 2d, 1955)) and upon certiorari the Supreme Court in its turn affirmed the judgment of the court of appeals. 351 U. S. 91 (1956). The Supreme Court thought that the district court had correctly dismissed the proceedings because of the failure of the government to file the required affidavit at the time the complaint was filed. But note, that such dismissal had been without prejudice.

It seems to us that Rule 41(b) should be interpreted as applying only to cases in which the trial judge is exercising

some discretion and is not merely acting mechanically pursuant to the direction of a superior court. There must be a rule that a bare "dismissal" is to be interpreted as either with or without prejudice, and 41(b) provides this rule in all cases where the district court has a real discretion in the matter. But there is obviously no such need where the trial court's disposition of the case has been predetermined by a superior court. It would be a violation of the intention of all the courts concerned if the dismissal of the earlier complaint were held in this case to be a judgment on the merits. Appellant's arguments exalt pure technicalities to a wholly unwarranted degree. And see Restatement, Judgments § 49 (1942).

A judgment will be entered affirming the judgment of the district court.

FEDERAL BUREAU OF INVESTIGATION

FREEDOM OF INFORMATION/PRIVACY ACTS SECTION

SUBJECT: FRANK COSTELLO

FILE NUMBER: 92-2869 SECTION 9

FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

Tolson
Mohr
Parsons
Belmont
Callahan
DeLoach
Malone
McGuire
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Ingram
Gandy

b7C

TO : Mr. Rosen [redacted] b7C

DATE: April 11, 1960

FROM : L. N. Conroy

SUBJECT: FRANK COSTELLO;
CONTINENTAL CASUALTY COMPANY

92-2869

PURPOSE:

To answer the Director's inquiry regarding the call on 4/7/60 by Senator Mike Monroney (D-Oklahoma) relative to Frank Costello's alleged stock interest in the Continental Casualty Company which, according to the Senator, had a considerable monopoly on insurance machines in airports throughout the country.

ALLEGATION APPEARING IN BUREAU FILES:

b7C, D

[redacted]

INVESTIGATION PERTINENT TO ALLEGATION:

b7C

[redacted]

Enclosure 4-12-60

92-2869-74

REC-31

1 - Mr. DeLoach

24 APR 14 1960

[redacted] b7C

(7)

6- [redacted] b7C

APR 18 1960

Memorandum to Mr. Rosen

b7C, D

[redacted]

RECOMMENDATION:

That attached letter be sent to the Attorney General, advising him of Senator Monroney's inquiry and a summary of the information pertinent thereto.

4-750 (Rev. 12-14-88)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

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☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
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FBI/DOJ

4-641 (12-3-59)

UNITED STATES GOVERNMENT

Memorandum

TO : [redacted] b7C

FROM : [redacted] b7C

DATE: 5-4-60

SUBJECT: FRANK COSTELLO

The attached IN THE SUPREME COURT OF THE United States has been received in the Records Branch, appropriately initialed, and indicated for file. By use of instant transmittal memorandum, all necessary recording and indexing will be accomplished. It is to be noted this form is for internal use only within the Records Branch, principally by the Routing Unit where bulky material not accompanied by memorandum is usually received.

The enclosure, if bulky and not usually filed with other papers in file, may be detached but this action should be clearly noted under the word "Enclosure."

Enclosure

1 ENCLOSURE [redacted] b7C

SPECIAL ATTACHED

62 MAY 5 1960

92-2869-

NOT RECORDED

184 MAY 4 1960

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92-2269-

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 802

FRANK COSTELLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 2a-13a) is not yet reported. The opinion of the District Court (R. 17-43)[1] is reported at 171 F. Supp. 10.

JURISDICTION

The judgment of the Court of Appeals was entered on February 17, 1960 (Pet. 1a). The petition for a writ of certiorari was filed on March 18, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The reference "R" is to petitioner's appendix in the court of appeals, which constitutes the record before this Court.

QUESTIONS PRESENTED

1. Whether the evidence is sufficient to establish that petitioner wilfully and falsely misrepresented a material fact during his naturalization proceedings.

2. Whether the government should have been barred from instituting this denaturalization proceeding by the lapse of time since naturalization.

3. Whether some of petitioner's admissions as to his true occupation at the time of naturalization were tainted by wiretapping.

STATUTE INVOLVED

8 U.S.C. 1451(a) (Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 68 Stat. 1232) provides, in part, as follows:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: * * *.

STATEMENT

On May 1, 1958, the United States filed a denaturalization complaint (together with affidavits of good cause) against petitioner in the United States District Court for the Southern District of New York (R. 3-14). Following trial without a jury, the District Court vacated the court order admitting petitioner to citizenship and cancelled the certificate of naturalization issued pursuant thereto (R. 17-44). On appeal, the Court of Appeals affirmed.[2]

1. The government's complaint alleged that the order admitting petitioner to citizenship in May 1925 and the certificate of naturalization had been "procured by the concealment of material facts and by wilful misrepresentation." Specifically, the complaint alleged that petitioner had sworn on three separate occasions (in his preliminary form for petition for

[2] The government had filed an earlier denaturalization complaint against petitioner on October 22, 1952, under 8 U.S.C. (1946 ed.) 738(a), the predecessor to the statute upon which this proceeding is founded. The District Court granted petitioner's motion to dismiss the earlier complaint and to strike the affidavit of good cause, without prejudice to a renewal of the proceedings, on the ground that both the government's affidavit of good cause (which was filed somewhat after the complaint was filed) and its evidence were seriously tainted by wiretapping. *United States* v. *Costello*, 145 F. Supp. 892 (S.D. N.Y.). On appeal, the Court of Appeals reversed, holding that the government should have been given an opportunity to establish that its evidence was untainted or otherwise admissible. *United States* v. *Costello*, 247 F. 2d 384 (C.A. 2). This Court granted the petition for a writ of certiorari and reversed, *per curiam*, on a ground not considered below—that the filing of the affidavit of good cause contemporaneously with the denaturalisation complaint was a prerequisite to the institution of the suit. *Costello* v. *United States*, 356 U.S. 256 (No. 494, O.T. 1957); see *Matles* v. *United States*, 356 U.S. 256.





naturalization, during his oral testimony before a naturalization examiner, and in his petition for naturalization) that his occupation was "real estate," whereas his actual occupation was the illicit purchase and sale of alcohol (R. 4-5); and that petitioner, in his petition for naturalization, had sworn that he would support and defend the Constitution and laws of the United States, whereas he was at that very time violating the laws of the United States by engaging in the illicit purchase and sale of alcohol (R. 5).

The evidence showed that during the period 1921-1923 petitioner worked for Emanuel Kessler who, until he received a 2-year sentence for violation of the National Prohibition Act, was engaged in the illegal importation of alcoholic beverages from Europe (R. 59-61). Kessler's boats would land about 500 cases of illicit liquor, each night, somewhere on Long Island, New York (R. 60-61). Petitioner and his brother, Edward Costello, were employed by Kessler to meet the boats and truck the liquor to hiding places for storage —either in a garage behind Edward Costello's home, or in an old mansion which petitioner and his brother had purchased (R. 62-65, see 71, 74, 76). Kessler would contact petitioner or Edward daily at their office, 405 Lexington Avenue, New York City, to arrange a meeting place for each night's activity (R. 52-56, 62-63, 76). The Costellos received about $6,000 each week from Kessler for their hauling and storage service (R. 65, 76-77). When Kessler left for jail in 1923, petitioner asked him "for some money so he could continue on." Kessler gave petitioner "either 100 or 200 cases" of liquor for that purpose (R. 68, 73).

During the period prior to December 1923, petitioner and his brother also stored liquor for Albert Feldman and bought and sold illegal liquor on their own account (R. 168-174). Occasionally petitioner would accept small lots of merchandise from Kessler in partial payment of the storage charges (R. 66). He disposed of 500 cases of liquor supposedly being stored for Kessler (R. 66-67, 175-176), and he somehow reacquired from the government about $250,000 worth of Kessler's whiskey seized in a raid on petitioner's mansion-warehouse (R. 67-68).

In the fall of 1925, petitioner and Mr. Harry Sausser (one of petitioner's character witnesses in his naturalization proceeding, see Govt. Exs. 7, 9, R. 201, 204) went to Frank Kelly, who was engaged in the importation of illegal liquor, and arranged to have several thousand cases of liquor transferred from a ship at sea to Kelly's vessel, an ocean-going schooner which was laying 100 miles off Long Island (R. 81-86, 93). The plan was to land the liquor in smaller boats at a later time (R. 85-87). In December 1925, petitioner and Kelly arranged to have one Coffey land the liquor stored on board Kelly's schooner (R. 152). Coffey was paid by petitioner's bookkeeper (R. 155, 162).

Late in 1924 or early in 1925, Sausser became associated with petitioner, an association which continued until Sausser's death in 1926 (R. 113-116, 123). Sometimes alcohol was stored on Sausser's premises (R. 118-119), and petitioner and Sausser were sometimes heard to discuss the business aspects of "bootlegging," such as the type of whiskey to be purchased and the price to be paid (R. 120). Sausser's daughter (Miss Helen

Sausser) visited the Lexington Avenue office used by petitioner and her father on three or four occasions. Although "supposedly a real estate office," this location was actually the base of operations for their dealings in illicit alcohol (R. 116-117, 123, 131-134).

On July 20, 1938, in a statement given to James M. Sullivan, Special Agent of the Treasury Department, petitioner stated that he had been in the liquor business "from 1923 or 1924 until about a year or two before Repeal." (R. 177-178).

In testimony before a federal grand jury on August 24, 1939, petitioner admitted that he had done "a little bootlegging," the last time around 1926 (R. 179-180).

In 1943, in testimony before a New York state grand jury and before a referee appointed by the Appellate Division of the Supreme Court of New York, petitioner stated that he smuggled illegal alcohol into this country during prohibition and received large sums of money from this activity (R. 184-185). During the period 1919 to 1932, petitioner earned $305,000, and most of this income came from his illicit alcohol traffic (R. 187-188, 190-191). Petitioner made about $20,000-25,000 in one real estate transaction during this time, using funds derived from "gambling or liquor" to finance the operation (R. 188-189).[3]

[3] Pursuant to the order of a New York state court, petitioner's telephone communications were intercepted during the period May 7, 1943 to November 1943. The grand jury interrogation was precipitated by a conversation between petitioner and a New York state judge (R. 47, 49-51). However, no information relating to petitioner's activities before 1930 was derived from these wiretaps (R. 46) and none of the interrogation regarding pre-1930 activity was based on or derived from wiretapipng (R. 47-48). Petitioner was interrogated regarding his pre-1930 pursuits solely for the purpose of background (R. 51).

On February 15, 1947, while testifying before the New York State Liquor Authority, petitioner stated that he engaged in bootlegging from 1923 to 1926 or 1927, that his headquarters was at 405 Lexington Avenue, and that his Canadian representative was Harry Sausser (R. 194-196).

A search of the records of the boroughs of Manhattan, Brooklyn, Queens, and the Bronx revealed that petitioner purchased a piece of property in 1922 and conveyed it to "Loretta B. Costello" in 1923. (R. 94-95). In 1924, the Koslo Realty Corporation purchased property in New York City and sold it on June 23 1925 (R. 95, 99).[4] A purchase money mortgage on this property was released on December 21, 1925, and petitioner signed the release as president of the Koslo Realty Corporation (Govt. Ex. 25, R. 225-226). The Koslo corporation also purchased several lots in the Bronx on August 12, 1925 (Govt. Exs. 19, 20, R. 209-212) and sold them on June 22, 1926 (Def. Ex. C, R. 231-232); purchased land in the Bronx from the Claire Building Corporation on October 26, 1925 (Govt. Exs. 21, 22, R. 213-216), and sold it to the R. G. & F. Corporation on July 15, 1926 (Def. Exs. A, B, R. 227-230). These latter transactions, however, were initiated several months after petitioner filed his petition for naturalization (see *supra*, p. 3).

2. The District Court found that the evidence was "clear, unequivocal and convincing" that petitioner had procured his order of naturalization by wilful mis-

[4] Apparently this is the transaction referred to by petitioner when he testified before the New York grand jury in 1943 (R. 95, 188, Govt. Ex. 18, R. 208).

representation of material facts and by fraud, in that petitioner had stated his occupation was real estate, whereas his true occupation was "bootlegging", and that petitioner in his oath of allegiance swore to support and defend the Constitution and laws of the United States, whereas at the time he was actually engaged in violating the Constitution and laws of this country (R. 21-22, see 33). The District Court summarized much of the evidence set forth above to support its conclusion (R. 23-26), and it noted that "[i]f the Government rested on the testimony of the individual witnesses it might be necessary to appraise their evidence more carefully, but in view of the fact that the defendant has frankly admitted, on a number of occasions, that in the period around 1925 and prior thereto he was engaged in bootlegging, the testimony of the individual witnesses is, if anything, merely cumulative." (R. 26).

With specific reference to the question of whether petitioner was actually occupied in real estate, or could reasonably think that such an answer was an honest answer to the question asked regarding occupation, the District Court pointed out (R. 27) that

> prior to the time that Costello had sworn that his occupation was "real estate" he personally had engaged in only one real estate transfer in his own name; and the [Koslo] corporation in which he was a principal engaged in only one transaction and that to the extent of purchasing one parcel of real estate. During the same period, * * * he was actively engaged in bootlegging on a large scale and with very profitable results. * * * The

> term "occupation" would commonly be understood to refer to the income producing activity to which a person devotes the major portion of his time and from which he derives the major portion of his income. * * * Obviously if he were engaged in an illegal occupation the Government would like to know that to determine whether he properly should be admitted to citizenship. Costello, confronted with the question and the fact that his occupation was an illegal one, had one of two choices in giving his answer. If he had told the truth he would have said that his occupation was bootlegging; his application for citizenship would then have been denied.[5] When he answered that his occupation was real estate he was giving a false and misleading answer and was therefore engaging in a willful misrepresentation in order to secure his naturalization certificate.

The trial judge rejected petitioner's contention that his statements as to his prior occupation as a dealer in illicit alcohol were tainted by wiretapping. He noted that there was clear evidence showing that the government did not learn anything regarding petitioner's activities in violation of the prohibition laws from or as a result of wiretapping. Although state officers intercepted petitioner's telephone communica-

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[5] On the question of the materiality of the misrepresentation, the District Court elsewhere noted (R. 22-23) that the judge who admitted petitioner to citizenship in 1925 had, in 1926, denaturalized a person who, during the five years preceding his naturalization, had been convicted of violating the prohibition laws. See *United States* v. *Mirsky*, 17 F. 2d 275 (S.D. N.Y.).

tions in 1943, and the New York grand jury investigation was precipitated by what was thus learned, petitioner's testimony as to his bootlegging activities was elicited for the purposes of background only and was collateral to the purposes of the investigation (R. 39-42). The trial judge concluded that "[t]he evidence received in this case was not wiretap evidence nor was it the fruit of wiretap evidence." (R. 42).

3. The Court of Appeals put aside the District Court's second ground for decision—that petitioner falsely swore that he would support and defend the Constitution and laws of the United States—without finally passing on it, holding that the charge of wilful misrepresentation and fraud was amply supported by the evidence of petitioner's false statements regarding his occupation (Pet. 8a-9a). It said (Pet. 7a-8a):

> Of course one has to begin a new occupation at some point of time, and at the outset there necessarily is not a great deal of evidence as to such activity. The evidence relating to Costello's real estate dealings is at best scanty. * * * If there was any further evidence along this line [as to real estate transactions], it would be peculiarly within the knowledge of Costello, and his failure to produce evidence of such activity warrants the inference that there was none such.
>
> We think it obvious that a wordly-wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but "dust in the eyes" to conceal his real occupation. * * * Surely it is conceivable that an applicant might believe that the answer called for no more than a disclosure of some "legal occupation". There is no evidence in the record that Costello so believed. * * *

ARGUMENT

1. (a) When petitioner filled out his preliminary form for petition for naturalization, one of the questions which had to be completed was "My present occupation is ————." Petitioner inserted the words "Real Estate" (Govt. Ex. 7, R. 200). When examined under oath by the naturalization examiner, petitioner stated that his business was "Real Estate" (Govt. Ex. 8, R. 202). And on May 1, 1925, when he submitted his petition for naturalization, petitioner answered the second question as follows, "My occupation is *Real Estate*" (Govt. Ex. 9, R. 204). There was nothing vague, complicated or confusing about these questions regarding petitioner's business or occupation. They simply asked petitioner to describe, as the District Court put it, the "income producing activity to which" petitioner "devote[d] the major portion of his time and from which he derive[d] the major portion of his income." (R. 27). And the answers which petitioner gave were, as both lower courts found, shown by clear, unequivocal, and convincing evidence to have been false.

According to his own sworn statement, petitioner earned $305,000 during the period 1919-1932, an average of over $23,000 each year. Almost all of this came from his illegal traffic in alcohol. There was other evidence that petitioner and his brother grossed as much as $6,000 each week in 1922-1923 from their criminal activities. As opposed to that, there was evidence that petitioner purchased one piece of property in his own

name in 1922, and that a corporation in which petitioner had some interest purchased certain property late in 1924. As of May 1, 1925, the date of petitioner's petition for naturalization, that property had not been sold, and the $20,000-$25,000 which petitioner later received as profit from the sale was as yet unrealized. Moreover, the very money which petitioner put into the latter real estate purchase was derived from his liquor and gambling activities. The lower courts thus had every reason to conclude that petitioner's sporadic real estate ventures were not really his occupation, and that he was actually in the business of violating the prohibition laws.

(b) The lower courts were also fully justified in concluding that petitioner's claim that his occupation was "real estate" was a knowing falsification. It is inherently unreasonable that a person would regard a business (real estate) from which he has not derived any money as his occupation, when at the same time he was deriving large sums of money from his illicit actions and had commercialized those actions to the point of maintaining an office, employing a bookkeeper assistant, and purchasing trucks for the specific purpose of advancing his liquor dealings.

Moreover, petitioner, in his preliminary form for petition for naturalization and during his examination under oath, named Harry C. Sausser as one of his expected witnesses, and listed Sausser's occupation as "Real Estate" (Govt. Exs. 7, 8, R. 201, 202). As a matter of fact, however, according to petitioner's later sworn statement, Sausser was petitioner's Canadian representative in the purchase of alcoholic beverages

which were later illegally imported into the United States. Petitioner thus must have known that his statement as to Sausser's occupation was false, and that his statement as to his own occupation was no less so.

Petitioner's contention that he might have interpreted the question as to occupation to refer only to his legal occupation (Pet. 6-9) is not well-founded. The question itself was straightforward—it asked for a disclosure of petitioner's "occupation", not his "legal occupation". In pre-naturalization proceedings, where the applicant's good character is an issue, the government is interested in a disclosure of the applicant's real business, whether or not it is a legal line of endeavor. Petitioner argues his case as though the facts show, and the lower courts found, that he had two occupations, one legal and one illegal (Pet. 8). We understand the lower courts to have found that petitioner had only one occupation, and that one an illegal activity. It is true that the Court of Appeals noted that "it is conceivable that an applicant might believe that the answer called for no more than a disclosure of some 'legal occupation'" (Pet. App. 8a). When applied to petitioner's case, however, that would mean that if petitioner so understood the question he should have answered "none", since the facts show that he had no legal occupation. The uncontroverted facts show that petitioner was engaged for a long period of time in an illegal business from which he earned large amounts of money, that his real estate dealings as of May 1, 1925 were few in number and devoid of profit. He therefore was not actually occupied in real estate, and on three different occasions he wilfully gave false an-

swers when he stated that his occupation was real estate.[6]

(b) Petitioner's reliance upon *Nowak* v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670, is misplaced. In those cases, the Court held that the question which the defendants answered incorrectly could easily have been interpreted by them "as a two-pronged inquiry relating simply to anarchy"

[6] Petitioner extends the opinion of the court below by his assertion that the Court of Appeals concluded that his failure to testify warranted the inference that petitioner understood the question as to occupation to call for disclosure of all income-producing activities, legal or illegal (Pet. 9, see 9-11 generally). The Court of Appeals noted that, if petitioner had engaged in any real estate transactions other than those reflected in this record, those other transactions would be peculiarly within petitioner's knowledge, and his failure to prove them warranted the inference that there were none (Pet. 8a). Proof by petitioner would not have required taking the stand. If other real estate transactions existed, they could be proved in some manner other than through petitioner's testimony. The rational connection between petitioner's failure to show other dealings and the inference that there were no other real estate transactions is sufficiently strong, and the comparative convenience of producing additional evidence sufficiently favorable to petitioner, to render the inference permissible even in a criminal case (which this was not). See *Morrison et al.* v. *California*, 291 U.S. 82, 87-90; compare *Tot* v. *United States*, 319 U.S. 463, 467-470; *Speiser* v. *Randall*, 357 U.S. 513, 523-524.

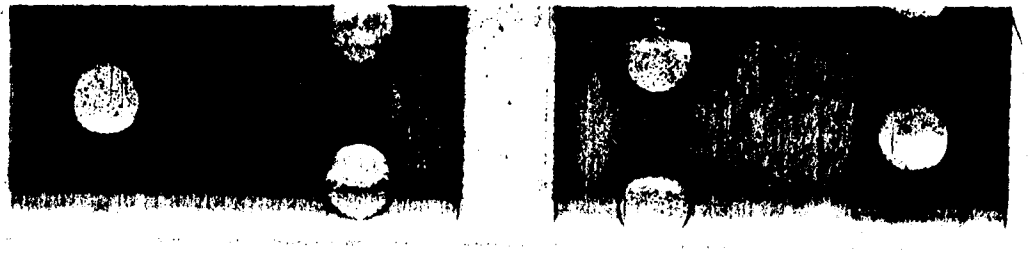
The Court of Appeals also noted (Pet. 8a) that an applicant might believe that the answer called for no more than a disclosure of some legal occupation, but that there was no evidence that petitioner so believed. We do not think that this should be construed as a statement that petitioner's failure to take the stand warranted the inference that petitioner understood the question to require disclosure of all occupations. Rather, we read the language of the Court of Appeals to mean that, though one might conceive of a case in which an applicant had misunderstood the question, in this case the government's uncontradicted evidence (discussed *supra*, pp. 11-14) showed that petitioner had not misunderstood the question and petitioner had not presented any evidence to refute the government's showing.

rather than as an inquiry as to membership in either an anarchistic or a communistic organization (356 U.S. at 664; see 356 U.S. at 672). But that construction flowed from the very question at issue in those cases. The question, which appeared in the preliminary form for petition for naturalization at the time those defendants were naturalized, read as follows (356 U.S. at 663):

> 28. Are you a believer in anarchy? . . . Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? . . .

Although the two halves of the second part of the question, referring to "anarchy" and "overthrow", were phrased disjunctively as a matter of syntax, the Court concluded that it was sufficiently misleading to make "it not implausible to read the question in its totality as inquiring solely about anarchy" (356 U.S. at 664). Here, however, there was no such possibility of confusion. The question answered falsely by petitioner was very simple: "My present occupation is ————." Moreover, we think it significant that petitioner falsely stated that his business or occupation was real estate, not once but three times, at three separate points in the naturalization process.

This case does not involve issues similar to those in *Chaunt* v. *United States*, No. 593, this Term, certiorari granted, February 29, 1960, and *Polites* v. *United States*, No. 631, this Term, certiorari granted, February 23, 1960. In *Polites*, issues raised by the petitioner are (1) whether he is entitled under Rule 60(b) of the



Federal Rules of Civil Procedure to attack collaterally the judgment of denaturalization; and (2) if so, whether his denaturalization based on proof of Communist party membership was valid (Govt. Brief, No. 631, pp. 6-12). Whatever issues depend on the nature of the questions asked, nothing turns on the simple question of occupation involved in this case. In *Chaunt*, No. 593, the issues raised are (1) whether concealment of arrest, not specified in the affidavit of good cause, may be relied upon for denaturalization and (2) whether concealment of the particular arrest there involved represents concealment of a material fact. The resolution of the issues in *Chaunt* will have no bearing on the issues in this case. Here, the affidavits of good cause and their attached exhibits alleged the concealment and misrepresentation of petitioner's occupation. And this petitioner has never questioned the materiality of his misrepresentation; his only contention in this area is that the government's inquiry as to occupation could reasonably be interpreted as calling for a statement as to some legal occupation, so that his misrepresentation was not wilful.

2. Both lower courts considered and rejected petitioner's argument (Pet. 11-12) that the government ought not be permitted to institute denaturalization proceedings an appreciable length of time after the certificate of naturalization is issued (Pet. 3a; R. 36-39). In the words of the Court of Appeals, "This statute [§340(a) of the Immigration and Nationality Act of 1952, *supra*, p. 2] contains no provision for limitations, nor is there any other federal statute applicable to the case." (Pet. 3a). The courts below

held further that the United States is not subject to the defense of laches in enforcing its rights, quoting from *United States* v. *Summerlin*, 310 U.S. 414, 416 (Pet. 3a; R. 37), and citing numerous denaturalization cases in which that doctrine has been applied (R. 37-39).

Petitioner contends (Pet. 11-12) that sovereign immunity from laches works a hardship on him and is not sound public policy when applied to this case, because, between the time of naturalization and the institution of denaturalization proceedings, "the naturalization examiners who processed petitioner's application, the witnesses who testified on his behalf, and the judge who admitted him to citizenship have all died" (Pet. 12). This is not a sufficient reason to preclude the government from cancelling a certificate procured by misrepresentation. The government bears a heavy burden of proof in making out its case for denaturalization,[7] and that very burden provides a sufficient safeguard against denaturalization judgments founded on the time-dimmed recollection of uncorroborated hostile witnesses. The aim of the proceeding is merely to deprive the defendant of "his ill-gotten privileges", *Johannessen* v. *United States*, 225 U.S. 227, 242, and Congress has decided that, so long as the government can show by clear, convincing, unequivocal evidence that the privileges were in fact "ill-gotten", it ought to be permitted to do so.

Moreover, petitioner's argument has no application to his own case. The issue in this case was the falsity

[7] See *Schneiderman* v. *United States*, 320 U.S. 118, 158; *Baumgartner* v. *United States*, 322 U.S. 665, 670-672; *Knauer* v. *United States*, 328 U.S. 654.

of petitioner's sworn statements as to his occupation. The primary proof that petitioner's statements were not only false, but wilfully false, flows from his own admissions made subsequent to his naturalization. And the evidence as to his real estate transactions was drawn from public records unaltered by the passage of time.

3. The trial court fully explored the question of unauthorized interceptions and divulgences of petitioner's telephone communications and ascertained that no agency of government, state or federal, learned anything regarding petitioner's illegal dealings in liquor, directly or indirectly, as a result of wiretapping (R. 40-41). The most that can be said is that a state grand jury investigation of the political nomination of a state judge was precipitated by an interception made by New York officers; that petitioner was a witness before this grand jury; and that he testified as to his prior violation of the prohibition laws when questioned regarding his background. In these circumstances, the District Court was clearly correct in concluding that *Nardone* v. *United States,* 308 U.S. 338, does not require that petitioner "be granted immunity for any admissions which he thereafter made, not in the telephone conversations but in answer to any [collateral] questions in a later investigation." (R. 41-42).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.[8]

J. LEE RANKIN,
Solicitor General.

MALCOLM RICHARD WILKEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
EUGENE L. GRIMM,
Attorneys.

APRIL, 1960.

[8] On April 18, 1960, after this brief had been written and sent to the printer, the Government was served with a "Motion for leave to amend Petition for a Writ of Certiorari and Amendment to Petition." We shall answer this motion separately.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1960 847129 1217

FD-36 (Rev. 12-13-56)

FBI

Date: 5/16/60

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TO: DIRECTOR, FBI (92-2869)

FROM: SAC, WFO (92-818)

FRANK COSTELLO, aka
ANTI-RACKETEERING
(CO:NY)

ReWFOlet to Director 4/1/60.

On 5/16/60, the U. S. Supreme Court (USSC) granted certiorari in the case entitled FRANK COSTELLO, Petitioner, vs. UNITED STATES OF AMERICA, entered as #802 Appellate of the October, 1959, term of the USSC. The order of the USSC is quoted as follows:

"Number 789 UNITED STATES vs. LUCCHESE, Number 802, COSTELLO vs. UNITED STATES. The petitions for Writ of Certiorari are granted. The motion to amend the petition for certiorari in number 802 is assigned for hearing and consolidation with the argument on the merits in number 789 and a total of one hour is allowed for oral argument. Two hours are allowed for oral argument in number 802."

A review of the USSC docket #789 Appellate reflected that on 3/14/60, a petition for Writ of Certiorari was filed by the Solicitor General and on 4/12/60, a Brief for the Respondent in Opposition was filed by Attorney RICHARD J. BURKE for GAETANO LUCCHESE, aka THOMAS LUCKESE, THOMAS LUCASE, THOMAS ARRA and THOMAS LUCHESE.

[redacted] Clerk's Office, USSC, advised that the question presented in the COSTELLO case and the LUCCHESE case are the same and therefore it is the reason for the USSC consolidating these matters for argument [redacted] made available

APPARENTLY

REC-20 92-2869-76

MAY 24 1960

3 - Bureau (Enc. 1)
2 - New York (92-649)
1 - WFO [redacted]

(6)
AIRTEL

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Special Agent in Charge

WFO 92-214

67C

a copy of the brief filed by LUCCHESE received in USSC 4/12/60. [redacted] said he was making this brief available on a temporary basis as the brief was needed by the USSC when this matter is argued. The brief furnished by [redacted] is being enclosed for the information of the Bureau and it is requested that it be returned to the WFO by 6/15/60.

67C

SAC, Washington Field (92-214) 5/23/60

Director, FBI (92-2869) - 76

[redacted]
FRANK CARRILLO, aka
Neg - JACKSONVILLE

[redacted]

[redacted]

[redacted]

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 7/20/60

67C [redacted] : SAC, WFO (92-214)

SUBJECT: FRANK COSTELLO, aka
ANTI-RACKETEERING
(OO:NY)

[redacted] 67C

ReWFO airtel to Director 5/16/60.

On 7/18/60, a check of the US Supreme Court (USSC) docket reflected that no further action has been taken in this matter by the USSC since 5/16/60.

For the information of the Bureau and the New York Division the USSC adjourned on 6/27/60 until the October, 1960, term of the USSC.

The docket of the USSC reflected that the above-captioned matter was carried as #802 Appellate cf the October, 1959, term of the USSC. This matter has been renumbered by the USSC for the October, 1960, term and is now numbered as #59 of the 1960 term of the USSC.

P*
(2) Bureau
2-New York (92-649)
1-WFO

[redacted] 67C
(5)

67C [redacted]

EX 109

REC: 22 92-2869-77

16 JUL 20 1960

[redacted]

[redacted] 67C

62 JUL 22 1960

67C

OPTIONAL FORM NO. 10
5010-104

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 11/30/60

FROM [redacted] SAC, WFO (92-214)

b7C

SUBJECT: FRANK COSTELLO, aka
ANTI-RACKETEERING
(OO:NY)

[redacted] b7C

ReWFOlet to Director 7/20/60.

On 11/21/60, a check of the United States Supreme Court (USSC) Docket Number 59 Appellate, reflected that no action has been taken by the USSC in this matter during the 1960 term of the USSC.

b7C [redacted] Clerk's Office, USSC, advised that this matter is scheduled for argument during the week of December 5, 1960. [redacted] after the arguments have been heard in this matter, the USSC will issue an opinion probably some time during the month of January, 1961.

This matter will be followed with the USSC by the WFO.

P*
(2) - Bureau
1 - New York (92-649)
1 - WFO

[redacted] b7C
(4)

b7C [redacted]

REC-14 92-2869-78

11 DEC 1 1960

EX-102

52 DEC 8 1960

[redacted] b7C

FD-36 (Rev. 12-13-56)

FBI

Date: 2/20/61

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Mr. Trotter
Mr. W.C.Sullivan
Tele. Room
Mr. Ingram
Miss Gandy

TO: DIRECTOR, FBI (92-2869)

FROM: SAC, WFO (92-214)

FRANK COSTELLO, aka
ANTI-RACKETEERING
(OO:NY)

ReWFOlet to Director 11/30/60, advising that the U. S. Supreme Court (USSC) would hear arguments in the case of FRANK COSTELLO vs United States during December, 1960.

On 2/20/61, the USSC affirmed the decision of the lower court. The majority opinion delivered by Justice BRENNAN while Justice DOUGLAS with whom Justice BLACK concurred in dissenting.

For the additional information of the Bureau at the time the arguments were heard in the COSTELLO case arguments were also heard by the Justices in the case of United States vs GAETANO LUCCHESE. Justice BRENNAN also delivered the opinion of the court in the LUCCHESE case.

For the information of the Bureau and the New York Division there is enclosed the majority opinion delivered by Justice BRENNAN in the COSTELLO case and the dissenting opinion of Justice DOUGLAS in the COSTELLO case and the opinion of Justice BRENNAN in the LUCCHESE case.

RJC
(3) - Bureau (Enc. 3)
2 - New York (92-649) (Enc. 3)
1 - WFO
(6)

3 ENCLOSURE

REC-47 92-2869-79

FEB 28 1961

LBI AIRTEL

EX-113

RECD DE FOACH

Approved: _____ Sent _____ M Per _____

Special Agent in Charge

62 MAR 3 1961 194

SUPREME COURT OF THE UNITED STATES

No. 59.—OCTOBER TERM, 1960.

Frank Costello, Petitioner, v. United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February 20, 1961.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The petitioner became a naturalized citizen on September 10, 1925. The District Court for the Southern District of New York revoked his citizenship on March 9, 1959, in this proceeding brought by the Government under § 340 (a) of the Immigration and Naturalization Act of 1952. That Act authorizes revocation of naturalized citizenship "on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation . . . ." [1] The petitioner, in 1925, swore in his

[1] The statute, 66 Stat. 260, as amended, 68 Stat. 1232; 8 U. S. C. § 1451, reads in pertinent part as follows:

"(a) *Concealment of material evidence; refusal to testify.*

"It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 1421 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: . . . ."

92-2869-79

ENCLOSURE

Preliminary Form for Naturalization, in his Petition for Naturalization, and when he appeared before a Naturalization Examiner, that his occupation was "real estate." The District Court found that this was "willful misrepresentation and fraud" and that "his true occupation was bootlegging," 171 F. Supp. 10, 16. The Court of Appeals for the Second Circuit affirmed, 275 F. 2d 355. We granted certiorari. 362 U. S. 973.

An earlier denaturalization complaint brought under 8 U. S. C. (1946 ed.) § 738 (a), the predecessor of § 340 (a), was dismissed on the ground that wiretapping may have infected both the Government's affidavit of good cause and its evidence. *United States* v. *Costello*, 145 F. Supp. 892. The Court of Appeals for the Second Circuit reversed on the ground that the Government should have been afforded an opportunity to show that its evidence either was untainted or was admissible in any event. 247 F. 2d 384. We granted certiorari and reversed, 356 U. S. 256, on a ground not considered below, namely, that the affidavit of good cause, which is a prerequisite to the initiation of denaturalization proceedings under § 340 (a), *United States* v. *Zucca*, 351 U. S. 91, was not filed with the complaint. On remand the District Court declined to enter an order of dismissal "without prejudice" and entered an order which did not specify whether the dismissal was with or without prejudice. The Government did not appeal from that order but brought this new proceeding under § 340 (a) by affidavit of good cause and complaint filed on May 1, 1958.

The petitioner argues several grounds for reversal of the order revoking his citizenship. He contends: (1) that the finding that he willfully misrepresented his occupation is not supported by clear, unequivocal, and convincing evidence, the standard of proof required of the Government in these cases; (2) that some of his admissions as to his true occupation at the time of his naturalization were

tainted by wiretapping, and thus were not evidence which the District Court might rely upon in reaching its conclusion; (3) that in the circumstances of this case the lapse of 27 years from the time of the petitioner's naturalization to the time of the filing in 1952 of the Government's first complaint should be deemed to bar the Government from instituting this proceeding; (4) that the second denaturalization proceeding was barred under Rule 41 (b) of the Rules of Civil Procedure by the failure of the District Court on remand of the first proceeding to specify that the dismissal was "without prejudice" to the filing of a new complaint.

We find no merit in any of these contentions.[2] The judgment of the Court of Appeals will be affirmed.

I.

The Government carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship. American citizenship is a precious right. Severe consequences may attend its loss, aggravated when the person has enjoyed his citizenship for many years. See *Schneiderman* v. *United States*, 320 U. S. 118, 122–123; *Nowak* v. *United States*, 356 U. S. 660, 663. In *Chaunt* v. *United States*, 364 U. S. 350, 352–353, we said:

> "Acquisition of American citizenship is a solemn affair. Full and truthful response to all relevant questions required by the naturalization procedure is, of course, to be exacted, and temporizing with the truth must be vigorously discouraged. Failure to

[2] The District Court also found that the petitioner knowingly and willfully swore false allegiance to the Constitution and laws of the United States. Like the Court of Appeals, 275 F. 2d, at 360, we find it unnecessary to pass upon the petitioner's attack upon this finding, since we think that the revocation of his citizenship on the first ground was clearly correct.

give frank, honest, and unequivocal answers to the court when one seeks naturalization is a serious matter. Complete replies are essential so that the qualifications of the applicant or his lack of them may be ascertained. Suppressed or concealed facts, if known, might in and of themselves justify denial of citizenship. Or disclosure of the true facts might have led to the discovery of other facts which would justify denial of citizenship.

"On the other hand, in view of the grave consequences to the citizen, naturalization decrees are not lightly to be set aside—the evidence must, indeed be 'clear, unequivocal, and convincing' and not leave 'the issue . . . in doubt.' *Schneiderman* v. *United States,* 320 U. S. 118, 125, 158; *Baumgartner* v. *United States,* 322 U. S. 665, 670. The issue in these cases is so important to the liberty of the citizen that the weight normally given concurrent findings of two lower courts does not preclude reconsideration here . . . ."

In 1925 a known bootlegger would probably not have been admitted to citizenship. Decisions before and after the repeal of the Eighteenth Amendment held that the applicant who trafficked in the sale, manufacture, or transportation of intoxicating liquors during Prohibition, within the five years preceding his application, did not meet the statutory criterion that an applicant must have behaved as a person "of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." Act of 1906, § 4, 34 Stat. 596, 598.

In *United States* v. *De Francis,* 50 F. 2d 497, 498, the Court of Appeals for the District of Columbia stated, "Any person who violates the provisions of the Prohibition Act violates the principles of the Constitution of the United States, and cannot be held to be attached to the

principles of the Constitution of the United States. Nor can it be said that such a person possesses good moral character."

In *Turlej* v. *United States*, 31 F. 2d 696, 699, it was said, "Few cases can be found where applicants for citizenship have been admitted, if guilty of violating liquor laws within the five years preceding the hearing, and such cases have been severely criticized by the courts. This was true even before the adoption of the Eighteenth Amendment as a part of our national Constitution." See also *In re Trum*, 199 F. 361.

In *United States* v. *Villaneuva*, 17 F. Supp. 485, 487, the court said, "Courts have quite universally held that violations of prohibition liquor laws, whether national or state, should be taken into consideration in determining questions respecting the good moral character of applicants for citizenship and their attachment to the principles of the Constitution of the United States."

In *United States* v. *Mirsky*, 17 F. 2d 275, a denaturalization case, Judge Thacher of the District Court for the Southern District of New York, who had admitted Costello to citizenship less than a year earlier, said: "One who deliberately violates the Eighteenth Amendment of the Constitution cannot be said to be attached to the principle declared by that amendment." P. 275. "Neither the fact that in this and in other communities there are many citizens who are not attached in thought or deed to the principle embodied in the Constitution by the Eighteenth Amendment, nor the fact that opposition to that principle with a view to removing it from the Constitution is quite generally thought to be the part of good citizenship, can relieve this court of its duty to apply the law as it is now written." P. 276.

See also *In re Nagy*, 3 F. 2d 77; *In re Raio*, 3 F. 2d 78; *In re Phillips*, 3 F. 2d 79; *In re Bonner*, 279 F. 789; *Ex parte Elson*, 299 F. 352.

Some of these cases turned on a finding of illegal procurement of the certificate because of demonstrated lack of attachment to the principles of the Constitution rather than upon "fraud" under 8 U. S. C. § 738 (a).[3] However, the cases demonstrate the materiality of the concealment by the petitioner of his bootlegging if that in fact was his true occupation. Such concealment would support the conclusion that he was an applicant who had "[s]uppressed or concealed facts . . . [which] . . . if known,

[3] Section 340 (a) authorizes denaturalization on the single ground of "concealment of a material fact or . . . willful misrepresentation." Its predecessors, § 338 (a) of the Immigration Act of 1940, and §15 of the original Act of Congress in 1906 giving statutory basis for denaturalization, authorized denaturalization for "fraud" or illegal procurement. The change from "fraud" to "concealment of a material fact or . . . willful misrepresentation" apparently was made primarily to remove doubt as to whether denaturalization could be based on so-called "intrinsic" fraud, fraud through false swearing in the naturalization proceedings, or only on the traditional equity ground for cancellation of a judgment, "extrinsic" fraud, inhering in activities collateral to the proceedings themselves such as the concealment of witnesses from the court. Certain lower court cases had indicated that only extrinsic fraud might be encompassed within the term, compare *United States* v. *Kusche*, 56 F. Supp. 201, with *United States* v. *Hauck*, 155 F. 2d 141, in accordance with the rule that had apparently been applied to revocation of a judgment admitting to citizenship prior to the Act of 1906, see *United States* v. *Gleeson*, 90 F. 778; cf. *United States* v. *Norsch*, 42 F. 417. Congress thus acted in 1952 to make it clear that false statements in the course of the naturalization proceedings could be the basis for revocation of citizenship. See S. Rep. No. 1515, 81st Cong., 2d Sess. 756–769. But there appears no congressional purpose to lay down a looser definitional standard for "willful misrepresentation" or laxer requirements of proof than had previously been applied by the courts which held misstatements during naturalization proceedings to constitute fraud under the prior statutes. The practice of the Immigration and Naturalization Service apparently treated "fraud" under the older Acts as involving willful misrepresentation or concealment of material facts. See S. Rep. No. 1515, 81st Cong., 2d Sess. 756.

might in and of themselves justify denial of citizenship." *Chaunt* v. *United States, supra,* at 352–353.

We have examined the record to determine if the evidence leaves "the issue in doubt," *Schneiderman* v. *United States,* 320 U. S. 118, 158, whether the petitioner procured his naturalization by willfully misrepresenting that his occupation was real estate. It does not. However occupation is defined, whether in terms of primary source of income, expenditure of time and effort, or how the petitioner himself viewed his occupation, we reach the conclusion that real estate was not his occupation and that he was in fact a large-scale bootlegger.

The Government built its case on a solid foundation of admissions made by the petitioner in several federal and New York State inquiries beginning in 1938. In that year he admitted to a Special Agent of the Bureau of Internal Revenue that he had engaged in the illicit liquor business from 1923 or 1924 until a year or two before the repeal of the Eighteenth Amendment in 1933. In 1939 he testified before a federal grand jury in the Southern District of New York that "I did a little bootlegging. . . . The last time was around 1926." In 1943 he testified before a New York County grand jury that he had been in the liquor business in the twenties and had an office at 405 Lexington Avenue, New York City, as early as 1925. He also admitted that he had reported an aggregate income of $305,000 for New York State income tax purposes for the years 1919 to 1932 and that "[m]aybe most of it" was earned in the bootlegging business. Indeed, except for $25,000 realized from a real estate venture to be discussed shortly, there was no evidence of income from any legitimate business. In 1943, in a proceeding before an Official Referee of the Appellate Division of the Supreme Court of New York he acknowledged that money he had lent to Arnold Rothstein, prior to the

latter's murder in 1928, might have been derived "from a little bootlegging"; he also admitted that during the Prohibition era his business of smuggling alcoholic liquors into the United States was "profitable." In 1947 he appeared before the New York State Liquor Authority and testified that from 1923 to 1926 he operated a bootlegging business from 405 Lexington Avenue.

Several of his associates in bootlegging enterprises presented a picture of large-scale operations by the petitioner from early in Prohibition past the time of his application for citizenship. Emmanuel Kessler, a big operator apprehended in 1923 and convicted for his activities, financed, about 1921, the petitioner's purchase of trucks to haul Kessler's liquors after Kessler landed them on Long Island from boats on the high seas. Kessler "very often" discussed shipments with the petitioner in telephone calls to the Lexington Avenue office. Kessler's volume at the time was about 3,000 cases per week and he paid the Costello organization approximately $6,000 a week for haulage and storage. Kessler said that before he began serving his sentence "Frank Costello personally asked me . . . for some money so he could continue on. I think I left him either 100 or 200 cases."

Frank Kelly, who began bootlegging about 1922, smuggled liquors into the country using a chartered ship which he moored off the Long Island shore. He became associated with the petitioner in 1925 when he was introduced to the petitioner and the petitioner's Canadian representative, Harry Sausser, at Montauk, Long Island. On this occasion, Sausser negotiated with Kelly for the storage of liquors on Kelly's boat. Kelly was one of a combine including the petitioner which was indicted in 1925 for conspiracy to violate the liquor laws.

Phillip Coffey, also indicted with the petitioner in 1925, was a former Kessler employee. He purchased liquor from the Costello organization at 405 Lexington Avenue as early as 1922 or 1923. He insisted that he did "all my

business with Eddie Costello," the petitioner's brother, but admitted placing orders with Edward in the petitioner's presence and discussing purchases with the petitioner. Coffey told of an occasion, which he thought occurred in 1925, when Kelly and the petitioner came by automobile to Montauk Point and Kelly gave him instructions for the removal of liquor from Kelly's chartered schooner. He said that he was paid for his services at petitioner's Lexington Avenue office by Edward Ellis, the petitioner's bookkeeper.

Albert Feldman, another admitted bootlegger, started in 1920 and dealt with both the petitioner and Kessler. He arranged with the petitioner about 1923 at the Lexington Avenue office to have the petitioner haul and store some liquor for him. He also talked with the petitioner regarding its sale. The petitioner told Feldman he had "a customer for the 1000 cases," that he "could sell them and he would be able to pay me in a few days, as soon as they were delivered, to which I agreed; and Frank said that 'I'll be responsible for the money.' " In regard to the petitioner's role in liquor transactions, Feldman said, "everything was Frank Costello. He was the businessman. He did all the business."

Helen L. Sausser, daughter of Harry Sausser, was 18 when she became acquainted with the petitioner in 1925. Sausser was one of the two persons who executed the affidavit attached to the petitioner's Petition for Naturalization and swore that he also was in the real estate business. The daughter recalled overhearing conversations between petitioner and her father about liquor, and said that her father admitted to her mother that he was engaged in bootlegging. The daughter testified that she had never known her father to engage in the real estate business.

Despite these strong proofs of the falsity of the petitioner's answers, the petitioner insists that the evidence derived from the Government's own investigation of his

activities in the real estate business should leave us with a troubling doubt whether he stated falsely that he was engaged in that occupation. He had told the New York grand jury in 1943, when asked what "other occupation" besides bootlegging he followed during Prohibition, that "I was doing a little real estate at that time." The Government put in evidence in this proceeding state corporate records and records from the Registries of Deeds in New York City. These show that petitioner was indeed identified with three corporations empowered to engage in the purchase and sale of real estate. We dismiss two of the corporations, organized in 1926, without further mention beyond the fact that the petitioner testified before the Official Referee in the Appellate Division that his investment of $25,000 or $30,000 in one of them came from "bootlegging or gambling"; there was no evidence of any real estate transactions involving either company. The petitioner's contention must therefore be tested in the light of the activities of Koslo Realty Corporation. This corporation was organized in December 1924 and at least as early as August 1925 listed its address as the petitioner's office, 405 Lexington Avenue. A December 1925 document lists the petitioner as president of the company. The only evidence of any investment by the petitioner or profitable transaction in which he engaged before May 1, 1925, when he filed his Petition for Naturalization, concerned a property at West End Avenue and 92d Street, Manhattan, acquired by the corporation in December 1924. The petitioner admitted before the New York County grand jury that his investment in that transaction was from earnings in "gambling or liquor" and claimed that he made a profit of $25,000 on the sale of the property in June 1925. The only other transactions occurred after May 1, 1925. The corporation bought lots in the Bronx in August and October 1925. Some of the lots were improved and all of them were sold in 1926.

These proofs raise no troubling doubt in our minds. They do not support an inference that his occupation was real estate. They show only that the petitioner invested his illicit earnings in real estate transactions with the hope of profit. But he was neither deriving his principal income from Koslo Realty Corporation, spending any appreciable time conducting its affairs, nor making it his central business concern. He himself admitted that he operated his bootlegging enterprises from the Lexington Avenue address. All of the witnesses who testified to activities at that address recounted bootlegging transactions and not one in real estate. And the postman who delivered mail to the office from 1924 to 1926, and saw the petitioner there several times a week, saw neither a secretary nor typewriter as might be expected in an active real estate business.

The Government's proofs show not merely that the petitioner's statements were factually incorrect, but show clearly, unequivocally, and convincingly that the statements were willfully false. The petitioner argues that the evidence is susceptible of the inference that he may have believed that the questions called for the disclosure only of a legal occupation. We may assume that "occupation" can be a word of elusive content in some circumstances, like the question involved in *Nowak* v. *United States, supra,* and *Maisenberg* v. *United States,* 356 U. S. 670, upon which decisions the petitioner relies. But that argument of ambiguity is farfetched here. No one in the petitioner's situation could have reasonably thought that the questions could be answered truthfully as they were. It would have been a palpable absurdity for him to think that his occupation was real estate; he actually had no legal occupation. On this record, his only regular and continuing concern was his bootlegging upon which he depended for his livelihood. He only dabbled in real estate and by his own admission financed even this side-

line from "liquor or gambling." We need not determine whether the evidence supports the conclusion that petitioner organized Koslo Realty Corporation to provide him with a facade or front to mislead the law-enforcement authorities as to his true occupation, although the appearance of a legitimate occupation was obviously convenient for him and his group. We are convinced, however, that the petitioner counted upon the corporation to give plausibility to his representation as to his occupation when he applied for citizenship.

Our conclusion that his representations were willfully false is reached without reliance upon an inference from the failure of the petitioner to take the stand in this proceeding and testify in his own behalf. The Court of Appeals made some comments as to the significance of the petitioner's failure to testify, 275 F. 2d, at 358, but we do not read its opinion as basing the affirmance of the District Court's order upon such an inference. The district judge, whose order the Court of Appeals affirmed, made none. The evidence so strongly supports the District Court's conclusion that the aid of the inference was unnecessary to buttress it. We therefore find it unnecessary to decide in this case whether an inference may be drawn in a denaturalization proceeding from the failure of the defendant to present himself as a witness.

II.

The contention that illegal wiretapping precluded reliance upon the petitioner's admissions rests primarily upon interrogations by New York County District Attorney Frank Hogan in 1943 when the petitioner appeared before the New York County grand jury and the Official Referee in the Appellate Division. State officers had a tap on the petitioner's telephone during several months of 1943. Mr. Hogan made frequent references to the tapped conversations when questioning the petitioner.

The petitioner claims that his admissions of bootlegging activities during Prohibition were impelled by the belief that Mr. Hogan had learned from the tapped conversations the information sought by the questions. It is argued that the wiretaps were illegal under our decision in *Benanti* v. *United States*, 355 U. S. 96, and that his admissions were therefore to be excluded from evidence as "fruits of the poisonous tree," on the reasoning in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, and *Nardone* v. *United States*, 308 U. S. 338.

The short answer to this contention is that we conclude from the record that his truthful answers to Mr. Hogan's questions were not given because he thought that the conversations tapped in 1943 revealed his activities in the Prohibition era, but because he realized that these facts had been known to the authorities for some time. None of Mr. Hogan's questions even implies that Mr. Hogan gained his information from the 1943 wiretaps. Mr. Hogan had a transcript of the 1939 federal grand jury minutes of the petitioner's appearance before that body. The petitioner presses no argument in this Court that his admissions before that grand jury were infected with wiretapping. Early in Mr. Hogan's examination, the petitioner admitted that he recalled being questioned before the grand jury in 1939. The questioning at that proceeding had elicited the petitioner's admission of his bootlegging. Furthermore, his arrest and trial under the 1925 indictment for conspiracy to violate the liquor laws were matters of public record. And in 1938 the petitioner had also admitted his bootlegging to the agent for the Bureau of Internal Revenue. It is plain common sense to conclude that this information, long a matter of official knowledge, not something which he thought might have been disclosed in the 1943 wiretaps, impelled the petitioner to answer Mr. Hogan truthfully.

Moreover, District Attorney Hogan testified in the present proceeding. He expressly disavowed that his questions of the petitioner as to his activities during Prohibition were based on the 1943 wiretaps. He testified that his information was derived from files of the District Attorney's office, newspaper reports and court records. Although one of the intercepted telephone conversations was between the petitioner and one O'Connell, a codefendant in the 1925 Prohibition prosecution, Mr. Hogan stated that none of the 1943 wiretaps concerned the petitioner's bootlegging activities. The 1943 grand jury and Appellate Division investigations were concerned only with the petitioner's part in the nomination that year of a candidate for Justice of the State Supreme Court.

It is true that the 1943 wiretaps prompted the calling of the petitioner before the county grand jury and the Official Referee. But the "fruit of the poisonous tree" doctrine excludes evidence obtained from or as a consequence of lawless official acts, not evidence obtained from an "independent source." *Silverthorne Lumber Co.* v. *United States, supra,* at 392. We said in *Nardone* v. *United States,* 308 U. S. 338, 341, "Sophisticated argument may prove a causal connection between information obtained through illegal wire-tapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." We are satisfied that any knowledge in Mr. Hogan's possession which impelled the petitioner to answer truthfully came from such independent sources and that any connection between the wiretaps and the admissions was too attenuated to require the exclusion of the admissions from evidence.[4]

[4] The petitioner makes reference to the opinion of the District Court rendered upon the dismissal of the first complaint. That opinion rested the conclusion that the affidavit of good cause and the evidence were infected with wiretapping partly upon wiretaps said

III.

In contending that lapse of time should be deemed to bar the Government from instituting this proceeding, the petitioner argues that the doctrine of laches should be applied to denaturalization proceedings, and that in any event, the delay of 27 years before bringing denaturalization proceedings denied him due process of law in the circumstances of the case.

It has consistently been held in the lower courts that delay which might support a defense of laches in ordinary equitable proceedings between private litigants will not bar a denaturalization proceeding brought by the Government. See *United States* v. *Ali*, 7 F. 2d 728; *United States* v. *Marino*, 27 F. Supp. 155; *United States* v. *Cufari*, 120 F. Supp. 941, reversed on other grounds, 217 F. 2d 404; *United States* v. *Parisi*, 24 F. Supp. 414; *United States* v. *Brass*, 37 F. Supp. 698; *United States* v. *Spohrer*, 175 F. 440; *United States* v. *Reinsch*, 50 F. Supp. 971, reversed on other grounds, 156 F. 2d 678; *United States* v. *Schneiderman*, 33 F. Supp. 510, reversed on other grounds, 320 U. S. 118. These cases have applied the principle that laches is not a defense against the sovereign. The reason underlying the principle, said Mr. Justice

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to have been made in the 1920's. The district judge found "indications of the extensive use of wire taps covering a period of many years and beginning in the 1920's." 145 F. Supp., at 894. However, the district judge in this proceeding heard the testimony of two former Assistant United States Attorneys who conducted the investigation leading to the petitioner's indictment in 1925. The district judge "accepted as true" their testimony "that the Government's information as to the bootlegging activities of Costello was not derived from telephone conversations but was derived from statements of certain individuals acquainted with the defendant's activities." 171 F. Supp., at 25. We see no basis for disturbing this finding and the District Court's conclusion that no taint from wiretaps in the 1920's infected the later admissions made by the petitioner.

Story, is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." *United States* v. *Hoar*, 26 Fed. Cas. 329, 330 (No. 15,373). This Court has consistently adhered to this principle. See, for example, *United States* v. *Kirkpatrick*, 9 Wheat. 720, 735–737; *United States* v. *Knight*, 14 Pet. 301, 315; see also *United States* v. *Summerlin*, 310 U. S. 414, 416; *Board of County Commissioners* v. *United States*, 308 U. S. 343, 351; *United States* v. *Thompson*, 98 U. S. 486, 489.

None of the cases in this Court considered the question of the application of laches in a denaturalization proceeding. However, even if we assume the applicability of laches, we think that the petitioner failed to prove both of the elements which are necessary to the recognition of the defense. Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. See *Galliher* v. *Caldwell*, 145 U. S. 368, 372; *Southern Pacific Co.* v. *Bogert*, 250 U. S. 483, 488–490; *Gardner* v. *Panama R. Co.*, 342 U. S. 29, 31.

The petitioner alleges lack of diligence in the Government's failure to proceed to revoke his certificate within a reasonable time after his arrest and trial under the 1925 indictment for conspiracy to violate the Prohibition laws, or at least within a reasonable time after his admissions before the federal grand jury in 1939. There is no necessity to determine the merits of this argument, for the record is clear that the petitioner was not prejudiced by the Government's delay in any way which satisfies this requisite of laches. In *Brown* v. *County of Buena Vista*, 95 U. S. 157, 161, this Court said: "The law of laches, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of wit-

nesses, the muniments of evidence, and other means of proof." Insofar as these factors inherent in the lapse of time were operative in the present case, they seem plainly to have worked to petitioner's benefit, not to his detriment. The evidence of the petitioner's real estate activity consisted almost exclusively of public records. There is no suggestion that these records are not all the evidence of real estate activity there is or that any had been destroyed or were unavailable. Nor do we perceive any prejudice to the petitioner in the fact that the Naturalization Examiners who processed his application, the witnesses who appeared for him, and the judge who admitted him to citizenship, are dead. The examiners and the judge obviously could supply no evidence bearing on his claim that real estate was his occupation. Their knowledge on that subject came from him. And it stretches credulity to suppose that he would have inquired of those officials whether "occupation" meant lawful occupation. Finally, the petitioner does not suggest how the witnesses who supported his petition could have aided him on any issue material in this proceeding. In addition, his bootlegging associate, Sausser, died in 1926, and would not have been available even had the Government brought a proceeding immediately after the criminal trial.

Indeed, any harm from the lapse of time was to the Government's case. Although that case was supported primarily by documentary proofs and the petitioner's admissions, the Government supplemented this evidence with the testimony of the petitioner's associates in the bootlegging enterprise, and of others who had knowledge of those events. The Government's proof was made more difficult when a number of the witnesses admitted that their memories of details had dimmed with the passage of the years.

We cannot say, moreover, that the delay denied the petitioner fundamental fairness. He suffered no prejudice

from any inability to prove his defenses. Rather, the harm he may suffer lies in the harsh consequences which may attend his loss of citizenship. He has been a resident of the United States for over 65 years, since the age of four. We may assume that he has built a life in reliance upon that citizenship. But Congress has not enacted a time bar applicable to proceedings to revoke citizenship procured by fraud. On this record, the petitioner never had a right to his citizenship. Depriving him of his fraudulently acquired privilege, even after the lapse of many years, is not so unreasonable as to constitute a denial of due process. Cf. *Johannessen* v. *United States*, 225 U. S. 227, 242–243.

IV.

The petitioner moved for leave to amend his petition for a writ of certiorari to add a question whether the present proceeding was barred by the order of the District Court dismissing the earlier proceeding on remand, without specifying whether the dismissal was with or without prejudice. We deferred decision on the motion pending oral argument. The motion is granted and we proceed to determine the merits of the question.

It is the petitioner's contention that the order dismissing the earlier complaint must be construed to be with prejudice because it did not specify that it was without prejudice, and the ground of dismissal was not within one of the exceptions under Rule 41 (b) of the Federal Rules of Civil Procedure. That Rule provides:

> "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal

> on the ground that upon the facts and the law the plaintiff has shown no right to relief. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits."

We hold that a dismissal for failure to file the affidavit of good cause is a dismissal "for lack of jurisdiction," within the meaning of the exception under Rule 41 (b). In arguing contra, the petitioner relies on cases which hold that a judgment of denaturalization resulting from a proceeding in which the affidavit of good cause was not filed is not open to collateral attack on that ground. *Title* v. *United States*, 263 F. 2d 28; *United States* v. *Failla*, 164 F. Supp. 307. We think that petitioner misconceives the scope of this exception from the dismissals under Rule 41 (b) which operate as adjudications on the merits unless the court specifies otherwise. It is too narrow a reading of the exception to relate the concept of jurisdiction embodied there to the fundamental jurisdictional defects which render a judgment void and subject to collateral attack, such as lack of jurisdiction over the person or subject matter. We regard the exception as encompassing those dismissals which are based on a plaintiff's failure to comply with a precondition requisite to the Court's going forward to determine the merits of his substantive claim. Failure to file the affidavit of good cause in a denaturalizatiton proceeding falls within this category. *United States* v. *Zucca, supra; United States* v. *Costello*, 356 U. S. 256.

At common law dismissal on a ground not going to the merits was not ordinarily a bar to a subsequent action on the same claim. In *Haldeman* v. *United States*, 91 U. S. 584, 585–586, which concerned a voluntary nonsuit, this Court said, "there must be at least one decision on a *right*

between the parties before there can be said to be a termination of the controversy, and before a judgment can avail as a bar to a subsequent suit. . . . There must have been a right adjudicated or released in the first suit to make it a bar, and this fact must appear affirmatively." A similar view applied to many dismissals on the motion of a defendant. In *Hughes* v. *United States,* 4 Wall. 232, 237, it was said: "In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, and must be determined on its merits. If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit." See also *House* v. *Mullen,* 22 Wall. 42, 46; *Swift* v. *McPherson,* 232 U. S. 51, 56; *St. Romes* v. *Levee Steam Cotton Press Co.,* 127 U. S. 614, 619; *Burgett* v. *United States,* 80 F. 2d 151; *Gardner* v. *United States,* 71 F. 2d 63.

We do not discern in Rule 41 (b) a purpose to change this common-law principle with respect to dismissals in which the merits could not be reached for failure of the plaintiff to satisfy a precondition. All of the dismissals enumerated in Rule 41 (b) which operate as adjudications on the merits—failure of the plaintiff to prosecute, or to comply with the Rules of Civil Procedure, or to comply with an order of the Court, or to present evidence showing a right to the relief on the facts and the law—primarily involve situations in which the defendant must incur the inconvenience of preparing to meet the merits because there is no initial bar to the Court's reaching them. It is therefore logical that a dismissal on one of these grounds should, unless the Court otherwise specifies, bar a subsequent action. In defining the situations where

dismissals "not provided for in this rule" also operate as adjudications on the merits, and are not to be deemed jurisdictional, it seems reasonable to confine them to those situations where the policy behind the enumerated grounds is equally applicable. Thus a *sua sponte* dismissal by the Court for failure of the plaintiff to comply with an order of the Court should be governed by the same policy. Although a *sua sponte* dismissal is not an enumerated ground, here too the defendant has been put to the trouble of preparing his defense because there was no initial bar to the Court's reaching the merits. See *United States* v. *Procter & Gamble Co.*, 356 U. S. 677, 680, and footnote 4; *American Nat. Bank & Trust Co.* v. *United States*, 142 F. 2d 571.[5]

In contrast, the failure of the Government to file the affidavit of good cause in a denaturalization proceeding does not present a situation calling for the application of the policy making dismissals operative as adjudications on the merits. The defendant is not put to the necessity of preparing a defense because the failure of the Government to file the affidavit with the complaint requires the

[5] The inapplicability of the policy of the rule to other dismissals for failure to meet a precondition of adjudication has been recognized. The Advisory Committee on Amendments to the Federal Rules recommended in 1955 the addition of another specific exception, for dismissals for "lack of an indispensable party." Although the proposal was not adopted, one commentator has written:

"Undoubtedly a dismissal for lack of an indispensable party should be a dismissal without prejudice since the dismissal proceeds on the theory that his presence is required in order that the court may make an adjudication equitable to all persons involved. . . . The Committee's *proposal would*, however, take care of the situation where the court did not specifically provide that the dismissal was without prejudice; and thus expressly provide a result which the courts, of necessity, would have to reach even if the dismissal did not specify that it was without prejudice." 5 Moore, Federal Practice, 1959, Cum. Supp., p. 38.

dismissal of the proceeding. Nothing in the term "jurisdiction" requires giving it the limited meaning that the petitioner would ascribe to it. Among the terms of art in the law, "jurisdiction" can hardly be said to have a fixed content. It has been applied to characterize other prerequisites of adjudication which will not be re-examined in subsequent proceedings and must be brought into controversy in the original action if a defendant is to litigate them at all. See, *e. g.*, *Des Moines Navigation & R. Co.* v. *Iowa Homestead Co.*, 123 U. S. 552 (diversity of citizenship); *In re Sawyer*, 124 U. S. 200, 220–221 (jurisdictional amount). See generally *Noble* v. *Union River Logging R. Co.*, 147 U. S. 165, 173–174. Decisions in the lower courts applying the exception construe "jurisdiction" to encompass dismissals on grounds similar to that in the present case. See *Madden* v. *Perry*, 264 F. 2d 169; *Myers* v. *Westland Oil Co.*, 96 F. Supp. 667, reversed on other grounds, 181 F. 2d 371. We therefore hold that the Government was not barred from instituting the present proceeding.

Affirmed.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 59.—October Term, 1960.

Frank Costello, Petitioner, *v.* United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February 20, 1961.]

Mr. Justice Douglas, with whom Mr. Justice Black concurs, dissenting.

I do not think "bootlegging" *per se* would have been a ground for denying naturalization to an alien in the 1920's. If it were, it would be an act of hypocrisy unparalleled in American life. For the "bootlegger" in those days came into being because of the demand of the great bulk of people in our communities—including lawyers, prosecutors, and judges—for his products. However that may be, the forms of naturalization in use at the time did not ask for disclosure of all business activities of an applicant nor of all sources of income. If that had been asked and if only one source of income were disclosed, then there would be a concealment relevant to our present problem—whether the nondisclosed income was from bootlegging, playing the races, bridge or poker games, or something else. The "occupation" of an applicant was the question in the form Costello filed.* The form of the petition for naturalization did not ask for more; and unless we can say that "real estate" was not his "occupation" then we cannot let this denaturalization order stand. The Koslo Realty Corporation actually existed and petitioner was its president. It actually engaged in real

*The printed form of the Petition for Naturalization in use at the time had in it as item "Second" a line headed "My occupation is." After these words petitioner entered the words "Real Estate."

92-2869-79

ENCLOSURE

estate transactions. The fact that this real estate business was secondary in petitioner's regime did not make it any the less his "occupation." Petitioner answered truthfully when he listed "real estate" as his "occupation." He did not answer truthfully if the answer is taken to embrace all his sources of income. But, as I said, the form did not require that complete disclosure; and I would not resolve any ambiguity in favor of the Government. We could not do so and be true to the strict standard exacted from the Government by *Schneiderman* v. *United States,* 320 U. S. 118, 122–123.

SUPREME COURT OF THE UNITED STATES

No. 57.—October Term, 1960.

United States, Petitioner, *v.* Gaetano Lucchese, etc.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February 20, 1961.]

Mr. Justice Brennan delivered the opinion of the Court.

This denaturalization proceeding was brought in the District Court for the Eastern District of New York under § 338 (a) of the Nationality Act of 1940. 8 U. S. C. § 738. The "good cause" affidavit was not filed with the complaint. The District Court dismissed the complaint following our decision in *United States* v. *Zucca*, 351 U. S. 91, "without prejudice to the government's right to institute a proceeding to denaturalize the defendant upon the filing of the required affidavit." 149 F. Supp. 952. The Court of Appeals for the Second Circuit reversed, holding that the dismissal motion should have been denied. 247 F. 2d 123. We reversed and ordered the case "remanded to the District Court with directions to dismiss" the complaint. 356 U. S. 256. The District Court on the remand declined to order a dismissal "without prejudice" and instead entered an order which did not specify whether the dismissal was with or without prejudice. The Court of Appeals for the Second Circuit dismissed the Government's appeal in an unreported opinion which stated that "there was no basis for [the district judge] to take action other than he did, namely, to comply with the clear command of the Supreme Court, without attempted embellishment. We have no occasion now to pass on the effect of that command upon possible later litigation."

92-2869-79

ENCLOSURE

The Government filed its petition for certiorari only to assure its right to proceed against the respondent in a new proceeding in the event that we should rule in *Costello* v. *United States, ante,* p. ——, that the order entered by the District Court for the Southern District of New York in that case precluded the institution of the second denaturalization action against Costello. Our decision today in *Costello* establishes that such a form of dismissal does not bar a subsequent proceeding against the respondent. The writ is therefore

Dismissed.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

OFFICE MEMORANDUM - UNITED STATES GOVERNMENT

To: Director, FBI Date: 2/23/61

From: [redacted] SAC, Salt Lake City (94-263)

Subject: FRANK COSTELLO, WAS.
AR

b7c

Bufile # 92-2869

Due to the opening of the Las Vegas Office, the following changes in the above case have been made:

A. Location of File

(xx) Entire file sent to Las Vegas herewith.
( ) File sent to Las Vegas, except one copy of the following serials.
( ) File retained in Salt Lake City but one copy of following serials sent to Las Vegas.

Report of SA _____
Dated _____ at _____

Report of SA _____
Dated _____ at _____

Report of SA _____
Dated _____ at _____

Report of SA _____
Dated _____ at _____

B. Office of Origin

( ) Salt Lake City
( ) Las Vegas
(xx) Other Office as shown in file NY

C. Status, SU Office

( ) Pending
(xx) RUC 92-2869

1 - Bureau
1 - Las Vegas (Encls. 6) RUC 92-374
1 - Salt Lake City (36-1671)
1 - New York 92-649
1 - _____
1 - _____
1 - _____

NOT RECORDED
2 MAR 1 1961

[redacted] b7c

57 MAR 8 1961 194

[redacted] b7c

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO DIRECTOR, FBI (92-2869) DATE: 3/3/61

FROM [redacted] SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO aka
AR

b7C

ReBulet to NY dated 12/30/60, captioned "CRIMINAL INTELLIGENCE PROGRAM."

b7C

On 2/20/61, SA [redacted] verified through Warden D. M. HERITAGE, USP, Atlanta, Georgia, that FRANK COSTELLO, inmate register #80973-A, is presently confined at the USP, Atlanta, serving a sentence of 5 years imposed 5/17/54, for income tax evasion. COSTELLO's present release date with Good Time allowed is 6/17/61. His full term expires 11/18/62. It is to be noted that COSTELLO was not committed to serve sentence imposed 5/17/54, until 10/21/58, 182 days being imperative while subject was at liberty on appeal.

Warden HERITAGE stated that there is a detainer and warrant on file placed by the State Court in New York on charge of Contempt of Court. This detainer was placed in May, 1959.

On 2/22/61, Warden HERITAGE stated that he had been officially advised by the Director of the Board of Prisons of the action of the Supreme Court of the United States on 2/20/61, affirming the denaturalization of COSTELLO. The warden stated he anticipates that COSTELLO, upon his release, may be taken into custody by INS pursuant to deportation proceedings.

In view of the above, in accordance with reBulet, this matter is being placed in a closed status in view of subject's incarceration.

b7C

(2) - Bureau (92-2869)
1 - New York (92-649)

[redacted] b7C
(3)

REC-68 92-2869-80

11 MAR 6 1961

EX-117

63 MAR 10 1961

b7C [redacted]

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

Tolson
Belmont
Mohr
Callahan
Conrad
DeLoach
Evans
Malone
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Ingram
Gandy

TO : Mr. Belmont [redacted] DATE: June 20, 1961

FROM : A. Rosen [redacted]

SUBJECT: **FRANK COSTELLO, ET AL.**
FEDERAL DETENTION HEADQUARTERS, NEW YORK CITY
IRREGULARITIES IN FEDERAL PENAL INSTITUTIONS

This memorandum is to set forth information pertaining to the finding of contraband in Frank Costello's cell in the Federal Detention Headquarters (FDH), New York City, during the course of an investigation in December, 1958.

[redacted]

During the course of the investigation conducted, FDH authorities made an inspection of the locker of Frank Costello and found English Oval cigarettes which were not sold in the FDH Commissary, contained in L & M cigarette packages. Also found in the locker were three capsules and five white tablets which were subsequently identified as sedative capsules and tranquilizer pills. In the locker of an inmate with a bed adjacent to Costello, prison authorities found assorted candies and nuts and three foil-wrapped packages containing foodstuffs. All of these items were unauthorized.

Investigation disclosed that all lockers were unlocked and accessible to anyone. Costello claimed miscellaneous items, including some pills, had been in a cigar box in the locker when he arrived; further that he had not gone to his locker for ten days. Other inmates interviewed claimed no knowledge of the contraband items.

[redacted]

REC-18 92-2869-81

Interviews with correctional officers, supervisory personnel, other employees, and inmates at FDH developed no evidence of irregular conduct on the part of FDH personnel. The case was closed with the Assistant U. S. Attorney, Southern District of New York, declined to take any prosecutive action.

ENCLOSURE

[redacted]

0-19 (Rev. 6-1-61)

Polsgr
Belmont
Mohr
Callahan
Conrad
DeLoach
Evans
Malone
Rosen
Sullivan
Tavel
Trotter
Tele Room
Ingram
Gandy

Federal Pen Here Called Club For Underworld Uppercrust

Washington, June 16 (UPI).—The Federal House of Detention in New York was pictured today as a "country club" where well-heeled prisoners, including crime czar Frank Costello, have enjoyed such luxuries as sturgeon sandwiches, whisky and 85-cent cigars. One prisoner was found with $400,000 in diamonds.

Federal Prison Director J. V. Bennett denied the "country club" charge, which was made by Rep. John J. Rooney (D-N. Y.). But Bennett confirmed most of the instances cited by Rooney and said "we do not miss a day but that something happens" in some federal prison.



Rep. John J. Rooney

The prison is at West and 11th Manhattan.

The discussion came during a House Appropriations Committee hearing Tuesday on Bennett's request for $450,000 in additional money to reimburse state and local jails for the cost of handling federal prisoners.

The testimony was made public today as the committee voted Bennett all but $45,000 of the supplemental fund he requested.

About the Sparklers

Bennett agreed these things had happened in the house of detention.

Costello, although he denied they were his, was found with a sturgeon sandwich, some pills and a package of English Ovals cigarets. Bennett said Costello might have been "framed" by some prisoner who didn't like him and tossed a sturgeon sandwich into his cell, hoping guards would find it.

An unnamed prisoner arrested for diamond smuggling tried to give prison officer David L. Waterman $400,000 in diamonds he had hidden under thumb bandages. Waterman, who turned in the prisoner, said the inmate told him to take half of the diamonds and let him keep the other half.

One prisoner was discovered with an 85-cent cigar although the prison doesn't sell any that expensive.

Whisky, instant coffee, hacksaws and razor blades have been found in cells. Prisoners have returned from courts staggering drunk.

Bennett said the contraband problem is constantly under investigation. He said the prisoners may get the smuggled goods through prison employes or at the court houses.

That's Prison Life For You: Warden

Alexander Krimsky, warden of the Federal House of Detention at 427 West St., yesterday conceded that some contraband was smuggled into the jail from time to time but said the same thing happened in "all prisons everywhere."

Questioned about Rep. John J. Rooney's charge in Washington that the U.S. jail here was a "country club," Krimsky made this statement:

"I understand that Federal Prison Director J. V. Bennett explained that some cigarets, medicine and some food not sold in the institution were found in the cell of Frank Costello about 2½ years ago.

Tells of Probe

"Bennett admitted that from time to time other contraband has been found in the institution and that it was impossible to keep out all contraband because of the tremendous turnover of the inmates. It is a fact that [illegible]

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News 3
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUN 17 1961

ENCLOSURE
92-2169-81

incident of [redacted] contraband found in Costello's cell was investigated fully and it was impossible to determine how the contraband was brought in. It was suspected that some employe was involved. The FBI and the Prison Bureau both investigated and were unable to find an employe who was disloyal.

"In this connection, I would like to add there might be some dishonest or unreliable employes but there are other employees whom it is impossible to bribe. They have remained loyal to us.

"Personnel make shakedowns of inmates regularly and irregularly. We are doing our best."

11 — Did we investigate?

K

Memo Rosen to Belmont 6/20/61

[redacted]

67C

JUN 21 7 00 AM '61

FBI

4-750 (Rev. 12-14-88)

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FBI/DOJ




FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
AUG 2 1961

TELETYPE

Mr. Tolson	
Mr. Belmont	
Mr. Mohr	
Mr. Callahan	
Mr. Conrad	
Mr. DeLoach	
Mr. Evans	
Mr. Malone	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Mr. Ingram	
Miss Gandy	

URGENT 8-2-61 12-00 NOON JLW

TO DIRECTOR 2 AND SAC PHOENIX 92-255

FROM SAC NEW YORK 92-649 1P

FRANK COSTELLO, AKA, AR. RE PHOENIX TEL, THIS DATE.

[redacted] SDNY, ADVISED TODAY COSTELLO PHYSICALLY PRESENT [redacted] AUGUST ONE, ONE NINE SIX ONE, APPROXIMATELY ELEVEN FORTY AM UNTIL TWELVE FIFTY PM. COSTELLO OBLIGATED TO REPORT [redacted] MONTHLY UNTIL MAY TWENTYTWO, ONE NINE SIX TWO. [redacted]

ALSO ADVISED HE IS IN TOUCH TELEPHONICALLY WITH COSTELLO AND HIS ATTORNEY FROM TIME TO TIME. IT IS HIS BELIEF COSTELLO BEING MOST CAREFUL IN [redacted] IS ACTIONS TO AVOID ANY POSSIBLE TROUBLE. RUC.

END

NY R 2 WA DA

DECLASSIFIED-EAVRS

REC-46 92-2869-83

EX-113

62 AUG 9 1961

AUG 3 1961

[redacted]

4-750 (Rev. 12-14-88)

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FBI/DOJ

SAC, New York (92-649) 8/24/62

Director, FBI (92-3389)

FRANK COSTELLO
ANTI-RACKETEERING

[redacted] b7C

A review of the Criminal Intelligence Program of your office reveals that this case has been in a closed status for more than six months. In view of the importance of keeping current on all hoodlum activity, you should reopen this, and all other closed hoodlum cases, at six-month intervals. Conduct appropriate inquiry and submit results in report form. Specific recommendations as to additional investigation and reasons therefor should be set forth in the cover pages.

[redacted] b7C

MAILED 4
AUG 24 1962
COMM-FBI

REC-60 92-2862-84

AUG 27 1962

Tolson
Belmont
Mohr
Callahan
Conrad
DeLoach
Evans
Malone
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

[redacted] (4) b7C

F19

AUG 31 1962

MAIL ROOM ☐ TELETYPE UNIT ☐

OPTIONAL FORM NO. 10
5010-104

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 11/6/62

b7C [redacted]

FROM : SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, aka
AR

b7C [redacted]

Rebulet 8/24/62, pursuant to which instant investigation was reopened to ascertain subject's current activities.

For the information of the Bureau COSTELLO is free on bond at present pending final adjudication of his appeal from a deportation order issued by the Board of Immigration Appeals. Investigation to date indicates that the subject is being very circumspect regarding his activities so as not to embarrass his legal position. His time is divided between his homes in New York City and Long Island and his day-to-day contacts appear to be innocuous. Spot checks of subject over the past several weeks have developed no significant information.

[redacted]

Conflicting information has been received from informants regarding COSTELLO'S current stature in the rackets. Additionally, JOSEPH VALACHI (whose identity must be fully protected), who is a professed member of the organized criminal element, furnished information in September and November, 1962 that COSTELLO has been "reinstated" in the VITO GENOVESE faction but he was not able to provide any additional information to document this assertion.

b7C

[redacted]

b2, b7C, b7D

Effort will be made to resolve COSTELLO'S current position and to submit an investigative report by 11/30/62.

2 - Bureau (92-2869)
1 - New York (92-649)

[redacted] (3) b7C

REC-16 92-2869-89

EX-109

25 NOV 8 1962

50 NOV 15 1962

[redacted]

b7C

D-268 (Rev. 5-1-59)

FEDERAL BUREAU OF INVESTIGATION

b7C

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	11/29/62	9/13-11/20/62

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPED

CHARACTER OF CASE

ANTI-RACKETEERING

b7C

REFERENCE

b7C

Report of SA [redacted] NY, 11/10/58.
Bureau letter to NY, 8/24/62.

P

ENCLOSURES

TO BUREAU (2)

Two (2) copies of a letterhead memorandum characterizing the informants used in this report.

[redacted]

b7C

b7C

APPROVED [redacted] SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

(3) - Bureau (92-2869)

2 - USA, SDNY

3 - New York (92-649)

2-ECLIPSE

1-Crime Records Section

1-7537

92-2869-90 REC-42

EX-116

DEC 3 1962

DEC 3 3 31 PM '62

DISSEMINATION RECORD OF ATTACHED REPORT

NOTATIONS [redacted]

AGENCY			
REQUEST RECD.		LBI	
DATE FWD.			
HOW FWD.		JAN 24 1963	
BY			

b7C

U.S. GOVERNMENT PRINTING OFFICE 16—76324-1

4-750 (Rev. 12-14-88)

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FBI/DOJ

[redacted] b7C

SA [redacted]

SA [redacted]

SA [redacted]

SA [redacted]

b7C

ADMINISTRATIVE:

The "Armed and Dangerous" caution is being removed from this report inasmuch as COSTELLO's known activities in recent years do not justify this caption. No information has been developed that he carries weapons and, it is to be noted, he was not armed on the occasion of the attempt on his life made by adversaries in 1957.

LEADS:

NEW YORK

At New York, New York

Will consider the adaptability of unusual investigative techniques looking to exploring the nature and extent of COSTELLO's involvement in both legitimate, and illicit activities.

FD-204 (Rev. 2-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] 67C Office: New York, New York

Date: NOV 29 1962

Field Office File No.: 92-649 Bureau File No.: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: COSTELLO completed penitentiary sentence for tax evasion, 6/20/61 and completed sentence at Riker's Island Penitentiary, NYC on a contempt citation, 6/28/61. Denaturalization judgement against subject upheld by US Supreme Court, 2/20/61. Order of deportation appealed to US Court of Appeals, NYC, 6/6/62, and is still pending with no date for adjudication set to date. COSTELLO continues to reside with his wife at 115 Central Park West, NYC, and maintains summer home in Sands Point, Long Island. Information relating to activities and contacts as well as estimates of subject's stature in underworld set out.

- P -

DETAILS:

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

NY 92-649 RESIDENCE

b7C, D

[redacted] advised SA [redacted] on October 25, 1962, that FRANK COSTELLO and his wife continue in occupancy of Apartment 18F at this address.

b7C, D

[redacted] COSTELLO appears to lead a very circumspect life since his release from jail. He stated that almost invariably the subject leaves the building between 10:00 AM and 11:00 AM each day and takes a cab

b7C, D

[redacted]

b7C

[redacted] has on many occasions observed COSTELLO at this address. [redacted] the subject leaves the building alone each day and takes a cab downtown. [redacted] his destination is the Waldorf Astoria Hotel. On many days he returns home [redacted] usually alone upon his return. He appears to have few friends whom he entertains in his apartment and the only person with whom he is seen is his wife.

[redacted]

b7C, D

4-750 (Rev. 12-14-88)

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FBI/DOJ

NY 92-648

Status of Appeal

On October 2, 1961, there appeared in the "New York World Telegram & Sun" a dispatch authored by SCRIPPS HOWARD correspondent JACK STEELE at Washington, D.C. It is summarized as follows:

COSTELLO, "alleged prime minister of the underworld", made an appearance before the Board of Immigration Appeals on October 2, 1961, and listened to counsel argue his appeal from a deportation order. He was released from the Atlanta Penitentiary in June, 1961, after serving a 42 month sentence for income tax evasion. COSTELLO's attorney, EDWARD BENNETT WILLIAMS, described as "the nation's top criminal lawyer", argued that COSTELLO cannot be deported because his crime, involving moral turpitude - income tax evasion - was committed while he was still a naturalized citizen. COSTELLO's evasion of his 1949 and 1950 income taxes was part of a "single scheme" and thus does not constitute the two separate crimes required for the government to deport him. The government's position is that COSTELLO seeks to protect himself from deportation by using "the cloak of fraudulent citizenship".

The "New York Times" issue of January 3, 1962, reported that the Board of Immigration Appeals on the previous date upheld a deportation order against COSTELLO. It was noted that the Justice Department sued in 1952 to cancel COSTELLO's citizenship on the ground that he had concealed material facts about his arrest record at the time of naturalization. On February 20, 1961, the United States Supreme Court affirmed a District Court order stripping him of his citizenship.

NY 92-649

The "New York Times" issue of June 7, 1962, reflects that on the day previous COSTELLO, through his counsel WILLIAMS, petitioned the Federal Court of Appeals to "throw out an order for his deportation" on his contention that the Board of Immigration Appeals "had erred twice last January 2 in upholding the order". The deportation ruling was based on COSTELLO's conviction on two crimes involving moral turpitude. WILLIAMS contended the tax crimes were committed while COSTELLO was a citizen and therefore they could not form the basis for a deportation order as an alien.

It was noted that COSTELLO is a native, but not a citizen of Italy. He entered the United States on April 2, 1895 at 4 years of age and was naturalized on September 10, 1925. He is married to a citizen of this country.

"He was convicted on May 17, 1954, of income tax evasion for 1948 and 1949 and he spent nearly four years in prison. His citizenship was revoked on March 9, 1959, in Federal Court. On March 31, 1961, the Immigration and Naturalization Service began deportation proceedings."

A dispatch to the "World Telegram & Sun" dated February 23, 1962, records that, according to authorities of the United States Immigration Service, the Italian Government is refusing to accept COSTELLO, "one of this country's most unwanted persons - gangster FRANK COSTELLO". Italy contends that "COSTELLO forfeited his Italian citizenship when he swore allegiance to this country at his naturalization in 1925, thirty years after arriving here".

On November 7, 1962, [redacted] United States Court of Appeals, United States Courthouse, Foley Square, New York City, advised Special Agent (SA) [redacted] that the appeal taken by COSTELLO is still pending and no date has been set for consideration of this appeal. A review of the file disclosed that COSTELLO's attorney of record is EDWARD BENNETT WILLIAMS of Washington, D.C.

67

The "New York Times" issue of February 21, 1959, reported that on the previous day a decision was handed down by the Federal District Court in New York City, divesting COSTELLO of his American citizenship. This divestiture was based upon a fraudulent misrepresentation when he sought citizenship in 1925 that he was then in the real estate business when, in fact, he was involved in bootlegging operations. An appeal will be taken.

It was noted that COSTELLO was then in the Federal Penitentiary at Atlanta, Georgia, to which institution he was returned on October 21, 1958, to resume serving his tax-evasion sentence.

An article appearing in the "New York Herald Tribune" of February 18, 1960, reported that on the day previous the Federal Appeals Court upheld the action of the lower court in stripping COSTELLO of his citizenship.

According to the "New York Times" of February 21, 1961, the United States Supreme Court on the day before upheld the order stripping COSTELLO of American citizenship which had been handed down by the Federal District Court.

In the New York "World Telegram and Sun" of June 20, 1961, it is recorded that on that date COSTELLO was released from federal custody after serving three and one half years of a five year sentence for tax evasion. He appeared later on that date before the Court of General Sessions in New York City and received a fifteen day sentence for failure to answer questions before a grand jury concerning the assassination attempt made against him in 1957.

NY 92-649

The "New York Journal American" issue of June 28, 1961, reported that COSTELLO was freed on that date from Riker's Island Penitentiary upon the completion of his sentence for contempt.

It was reported in the "World Telegram and Sun" issue dated June 28, 1961, that the Immigration and Naturalization Service disclosed that COSTELLO had posted a $10,000 bond in the deportation case against him.

4-750 (Rev. 12-14-88)

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FBI/DOJ

b2, b7C, D

[redacted]

JOSEPH A. LANZA, FBI Number 785896, was described in an article in the April 11, 1957 edition of the "New York Journal American" as a leading underworld power. In an appearance before the New York State Crime Commission in 1953 LANZA conceded that he was a good friend of FRANK COSTELLO and CHARLES "Lucky" LUCIANO.

LUCIANO was at one time considered the most powerful underworld figure on the east coast of the United States. He was released from the New York State Prison on February 9, 1946 to accept voluntary deportation to Italy. He died at Naples, Italy on January 26, 1962.

b2, b7C, b7D

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4-750 (Rev. 12-14-88)

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☒ The following number is to be used for reference regarding these pages:

92-2869-90 pgs. 13 through 16

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FBI/DOJ

During the months of September, October and November, 1962, spot checks have been systematically conducted by Special Agents of the New York Office with a view to ascertaining who COSTELLO's contacts now are and what the pattern of his activity is. In summary, it was determined that the subject exercises a studied effort to avoid any association with persons, consorting with whom might prove embarrassing to him. He continues to depart his New York City apartment residence late each morning, keeps sensible hours which are spent at the better restaurants and hotel bars in Manhattan. He and his wife live uneventfully, have few visitors and they visit weekends at their Long Island summer home.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

November 29, 1962.

Title FRANK COSTELLO

Character Anti-Racketeering

Reference Report of SA [redacted] dated and captioned as above.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

[redacted]

b2, b7D

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

NOV 29 1962

Re: Frank Costello
Anti-Racketeering

b7C

Reference is made to the report of Special Agent [redacted] dated and captioned as above.

Set out below are characterizations of informants utilized in referenced report.

b7C, b7D

[redacted]

b2,

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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☐ Information pertained only to a third party. Your name is listed in the title only.

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_____ Page(s) withheld for the following reason(s): _____

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☐ For your information: _____

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☑ The following number is to be used for reference regarding these pages:
92-2869-90 last two pages.

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FBI/DOJ

REC-127

EX-112

SAC, Washington Field (92-214) 4-11-63

Director, FBI (92-3089) -91

FRANK COSTELLO, aka
AR

[redacted] b7c

There is enclosed herewith for return to the Supreme Court, a copy of the Costello Brief, forwarded to the Bureau with your letter of 3-14-63.

Enc.

1 - New York (92-369)

APR 11 1963
COMM-FBI

Tolson
Belmont
Mohr
Casper
Callahan
Conrad
DeLoach
Evans
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

(5) [redacted] b7c

193

APR 15 1963

MAIL ROOM ☐ TELETYPE UNIT ☐

NYK TJ 1203

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 3/14/63

FROM : SAC, WFO (92-214) (P)

SUBJECT: FRANK COSTELLO, aka
AR
(OO:NY)

During a routine examination of the Docket in the United States Supreme Court (USSC) it was observed that on 2/28/63, there was filed in the USSC a Petition for Writ of Certiorari and the Lower Court record in the case entitled FRANK COSTELLO versus Immigration and Naturalization Service, case number 882 Appellate, October Term, 1962.

Copy of the COSTELLO Brief was obtained from [redacted] and the same is transmitted herewith for the information of the Bureau. It is requested that this Brief be returned to WFO when it was served its purpose so that it may be returned to the Supreme Court.

A total of five Questions are presented in the Brief and for the information of the NY Office they are quoted herein below:

"1. Whether the provision of Sec. 241 (a) (4) of the Immigration and Nationality Act of 1952 for deportation of an 'alien . . . who at any time after entry is convicted of two crimes' applies to an individual who was a naturalized citizen when convicted.

"2. Whether conviction of two counts of attempted income tax evasion for two successive years, in a prosecution based on the net worth-expenditures method, is conviction of 'two crimes . . . not arising out of a single scheme of criminal misconduct' within the meaning of Sec. 241 (a) (4).

2-Bureau (Enc. 1)
1-New York (92-249)
1-WFO (92-214)

92-2869-91

REC-45

EX-117

13 MAR 15 1963

(4) FBI CLOSURE
Let to WFO
returning enc
4-11-63

"3. Whether the burden of proof on the issue of singleness of scheme may be imposed upon the alien sought to be deported.

"4. If the alien has any burden of proof on the issue of singleness of scheme, whether considerations of due process permit denying him a subpoena to obtain the testimony on that issue of the attorney who defended him at his tax evasion trial.

"5. Whether the conviction described in Question 2 supra is conviction of 'two crimes involving moral turpitude . . . .'

It is noted that Counsel for COSTELLO is shown as EDWARD BENNETT WILLIAMS and HAROLD UNGAR.

The government, according to [redacted] has 30 days from 2/28/63, within which to file a response in opposition to the petitioner's Brief. b7c

Indices of WFO disclose that NY is OO in captioned case.

WFO will follow and report results of the Supreme Court decision either denying or granting Certiorari.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 3/29/63

FROM : SAC, NEW YORK (92-649)

[redacted] b7C

SUBJECT: [redacted] FRANK COSTELLO, aka
AR

(OO-New York)

b7C

Rerep of SA [redacted] New York, 11/29/62.

For the information of the Bureau COSTELLO continues on $10,000 bond pending the outcome of his appeal to the United States Supreme Court. His appeal was turned down by the Court of Appeals, New York, on 12/4/62.

Periodic spot checks of COSTELLO over the past four months have developed no significant information. His activities are circumspect and his contacts are correct. Confidential Informants of NYO, who are in a position to know, have no information indicating that the subject is now active in the rackets. [redacted] b7E

NYO is endeavoring to develop an Anonymous Source through which, it is believed, COSTELLO'S past and recent activities and contacts may be determined. A report in this case will be submitted by 4/20/63.

(2) - Bureau (92-2869)
1 - New York (92-649)

[redacted] b7C
(3)

b7C [redacted]

REC-72 92-2869-92

9 APR 1 1963

[redacted] b7C

EX-116

53 APR 4 1963 347

FD-263 (Rev. 5-1-59)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	APR 18 1963	12/1 - 4/15/63

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPED [redacted]

CHARACTER OF CASE

ANTI-RACKETEERING

REFERENCE: Report of SA [redacted] New York, 11/29/62.
Atlanta letter to New York, 1/31/63.
New Orleans letter to New York, 2/8/63.

ENCLOSURES:

TO BUREAU (2)

Two (2) copies of a letterhead memorandum characterizing the informants in this report.

INFORMANTS

[redacted]

Contacted by:

SA [redacted]

SA [redacted]

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE:

(3) Bureau (92-2869)
2 - USA, SDNY
3 - New York (92-610)
1 - [redacted]

DO NOT WRITE IN SPACES BELOW

92-2869-93 REC 35

6 APR 22 1963

80 MAY 3

DISSEMINATION RECORD OF ATTACHED REPORT

AGENCY				
REQUEST RECD.				
DATE FWD.				
HOW FWD.				

55 MAY 20 1963

NOTATIONS

[redacted]

b7C

U.S. GOVERNMENT PRINTING OFFICE 16—76324-1

b7D, b7C

INFORMANTS

[redacted]

JOSEPH VALACHI

Contacted by:

SA [redacted]

b7C

SA [redacted]

ADMINISTRATIVE:

The Period of this Report is extensive owing to the conduct of sustained investigation with a view to developing a confidential source under secure conditions.

LEADS:

NEW YORK

At New York, New York

Will maintain contact with informants for current information as to subject's activities.

Will continue efforts looking to the establishment of a confidential source to provide significant information regarding COSTELLO's contacts and operations.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] 67C

Office: New York, New York

Date: APR 18 1963

Field Office File No.: 92-649

Bureau File No.: 92-2869

Title:

FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis:

Federal Court of Appeals, NYC, held COSTELLO deportable on 12/4/62. Writ of Certiorari filed in US Supreme Court by subject's counsel 2/28/63. [redacted] 67E Subject identified by informant as affiliate of VITO GENOVESE, well-known NYC racketeer. Spot checks of subject's residence in NYC unproductive.

-P-

DETAILS:

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Status of Appeal

The "Herald Tribune", New York daily newspaper, in the edition of December 5, 1962 reported that on the previous day the Court of Appeals in a unanimous decision upheld the decision of the Board of Immigration Appeals. The Court found that COSTELLO was deportable. It ordered his deportation from this country on the basis of his 1954 conviction for evading a total of $28,000 in taxes in 1948 and 1949. That, in the eyes of the Court, added up to two separate and distinct convictions and complied with the requirement that before an alien could be deported, he must have been found guilty of two separate crimes.

The newspaper reported that in 1961 the United States Supreme Court had stripped COSTELLO of his citizenship, obtained by fraud in 1925. The Court of Appeals ruled that the fact that COSTELLO was convicted of tax evasion while he was a naturalized citizen had no bearing-that he, in effect, never was a citizen under the law because he had obtained his papers through fraud. The Court also found that the tax convictions did involve crimes of moral turpitude, a position which is opposed to that taken by counsel for COSTELLO.

Examination of the Docket of the United States Supreme Court, Washington, D. C. disclosed that on February 28, 1963 there was filed in that Court a Petition for Writ of Certiorari and the Lower Court record in the case entitled "FRANK COSTELLO versus Immigration and Naturalization Service, case number 882 Appellate, October Term, 1962.

Five questions of law were presented in the filed Brief for COSTELLO, which are:

1. Whether the provision of Sec. 241 (a) (4) of the Immigration and Nationality Act of 1952 for deportation of an "alien...who at any time after entry is convicted of two crimes" applies to an individual who was a naturalized citizen when convicted.

2. Whether conviction of two counts of attempted income tax evasion for two successive years, in a prosecution based on the net worth-expenditures method, is conviction of "two crimes...not arising out of a single scheme of criminal misconduct" within the meaning of Sec. 241 (a) (4).

3. Whether the burden of proof on the issue of singleness of scheme may be imposed upon the alien sought to be deported.

4. If the alien has any burden of proof on the issue of singleness of scheme, whether considerations of due process permit denying him a subpoena to obtain the testimony on that issue of the attorney who defended him at his tax evasion trial.

5. Whether the conviction described in Question 2 supra is conviction of "two crimes involving moral turpitude..."

Attorneys of record for COSTELLO are EDWARD BENNETT WILLIAMS and HAROLD UNGAR.

Procedure of the Supreme Court requires that the Government has thirty days from February 28, 1963 to file a response in opposition to the petitioner's Brief.

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

3 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☒ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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92-2869-93 pages 4, 5, & 6

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FBI/DOJ

NY 92-6[illegible]

Systematic spot checks of the subject's residence at 115 Central Park West, New York City were conducted by Special Agents of the New York Office during the months of January, February and March, 1963 to determine the nature and extent of COSTELLO's day-to-day activities and also to establish the identities of individuals he is currently contacting. These checks developed no significant information. COSTELLO apparently confines his contacts to individuals who do not constitute a source of possible embarrassment to him, particularly in view of his current legal status. With the exception of occasional visits of members of his or his wife's family, he has no other visitors to his New York apartment nor to his home on Long Island.

[redacted]

b7 b7c b7d

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

APR 18 1963

Title FRANK COSTELLO

Character Anti-Racketeering

Reference Report of SA [redacted] b7C
dated and captioned as above.

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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FBI/DOJ

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 4/22/63

FROM: SAC, WFO (92-214)

SUBJECT: FRANK COSTELLO, aka
AR
(OO:NY)

b7C

ReWFOlet to Bureau dated 3/14/63 and Bulet to WFO 4/11/63.

The brief referred to in referenced Bureau communication has been returned to the Supreme Court.

Further examination of the docket in the case of FRANK COSTELLO vs. the Immigration and Naturalization Service, Case Number 882 Appellate, disclosed that on 4/1/63 a brief in opposition to the petition was filed by the Solicitor General and on 4/10/63 the petition in this case was distributed to the court justices.

By Order List handed down by the Supreme Court on 4/22/63 in instant case, the Court granted certiorari but stated it would be limited to question 1 presented by the petition which reads as follows:

b7C

> "Whether the provision of S 241 (a) (4) of the Immigration and Nationality Act of 1952 for deportation of an 'alien ... who at any time after entry is convicted of two crimes' applies to an individual who was a naturalized citizen when convicted".

According to the Order List, Mr. JUSTICE HARLAN took no part in the consideration or decision of this petition.

WFO will continue to follow this case in the Supreme Court.

92-2869-94

REC-73

2-Bureau
1-New York (92-249)
1-WFO

b7C

(4)

EX-102

13 APR 23 1963

54 APR 30 1963

b7C

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 6/26/63

67C

FR [redacted] SAC, WFO (92-214)(P*)

SUBJECT: FRANK COSTELLO, aka
AR
(OO:NY)

ReWFOlet to Bureau 4/22/63. 67C

[redacted] U. S. Supreme Court, on 6/24/63, advised that the case entitled, "FRANK COSTELLO vs. the Immigration and Naturalization Service, Case Number 882 Appellate," has been carried over to the next Term of Court which convenes the first Monday in October, 1963. He stated that Number 83 Appellate is the new case number for instant case.

As no action is to be taken in the Supreme Court in instant case prior to October, 1963, it is being carried in a pending inactive status in WFO until that time.

(2) - Bureau
1 - New York (92-249)
1 - WFO

[redacted] 67C
(4)

[redacted] 67C

REC-73 92-2869-95

JUN 27 1963

EX-116

67C [redacted]

55 JUL 5 1963

[redacted] 67C

FD-[illegible] (Rev. 5-1-60)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	8/19/63	4/20-8/19/63

TITLE OF CASE
FRANK COSTELLO aka

REPORT MADE BY [redacted] b7C

CHARACTER OF CASE
AR

b7C

REFERENCE:

Report of SA [redacted] at New York, 4/18/63.
New York letter to Washington Field (inter-office), 6/24/63.

- P* -

b7C

ENCLOSURES:

TO BUREAU (2)

Two (2) copies of a letterhead memorandum characterizing the informants utilized in this report.

b7C

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE:
3-Bureau (92-2869) ([redacted])
2-USA, SDNY
3-New York (92-849)
1-[redacted]

b7C

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92-2869-96

REC

AUG 21 1963

DISSEMINATION RECORD OF ATTACHED REPORT

AGENCY				
REQUEST RECD.		11 2 FEB: UL 1021LE		
DATE FWD.	57 SEP 19 1963	FBI		
HOW FWD.				
BY				

NOTATIONS

b7C

U.S. GOVERNMENT PRINTING OFFICE 16—76536-1

ADMINISTRATIVE:

Two copies of this report are designated for the USA, SDNY at his specific request.

The Period of this Report is extensive owing to the expenditure of sustained effort to develop a highly confidential source under completely secure conditions. It has been determined that such a source can not be established under the necessary secure conditions at this time. This possibility will be considered again in the future should present conditions change.

INFORMANTS:

Identity of Source	Contacted by
[redacted]	SA [redacted]
	SA [redacted]
	SA [redacted]
JOSEPH VALACHI	SA [redacted]
[redacted]	SA [redacted]
	SA [redacted]
	SA [redacted]
	SA [redacted]

b2; b7C, D

b7C

NY 92-649

This investigation is being placed in a Pending Inactive status in order to follow deportation proceedings being taken by the Department against COSTELLO.

LEAD:

NEW YORK

AT NEW YORK, NEW YORK. Will report the decision of the United States Supreme Court in the matter of COSTELLO's Order of Deportation, to be decided in the Fall Term, 1963.

COVER PAGE

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2-USA, SDNY

Report of: [redacted] b7C Office: New York, New York

Date: 8/19/63

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis:

COSTELLO continues to reside in Apartment 18F, at 115 Central Park West, NYC, with his wife. He has no recognized employment [redacted] b7C, D His associates recently have included [redacted] An order for COSTELLO's Deportation to Italy has been made the subject-matter for review by the US Supreme Court during its Fall Term, 1963.

- P* -

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

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☐ For your information: _____

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☑ The following number is to be used for reference regarding these pages:

92-2869-96 page 2

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FBI/DOJ

2. Residence

b2; b7C, D

[redacted]

Systematic spot checks by SAS of the Federal Bureau of Investigation during the past 3 months of May, June and July, confirm the fact that COSTELLO makes his home at either of the above addresses. On the occasions when these checks were made, it did not appear that COSTELLO did much entertaining at either address.

b2; b7D

[redacted]

B. ASSOCIATES

[redacted]

b2; b7C,D

[redacted]

JOSEPH A. LANZA also known as Joe Socks, bears FBI Number 785896, and was born in New York City on August 18, 1900. [redacted] advised in September, 1962, that LANZA is a long-time member of "Cosa Nostra." The informant advised that "Cosa Nostra" is the name used by members of the organized Italian criminal element to refer to their over-all criminal organization. LANZA is in the VITO GENOVESE "family." A "family" is a unit within the organization whose members are subject to the authority of the boss or leader of the "family."

On May 28, 1963, at 7:50 p.m., the subject was observed by SA [redacted] in the Pompeii Restaurant in the company of 8 unknown individuals. [redacted] was also present in the restaurant in the vicinity of COSTELLO but was not observed to make contact with COSTELLO.

XXXXXX
XXXXXX
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FEDERAL BUREAU OF INVESTIGATION
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92-2869-96 pg. 5

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FBI/DOJ

C. STATUS IN DEPORTATION PROCEEDINGS

On June 24, 1963, a review of the Docket in the case of FRANK COSTELLO versus the Immigration and Naturalization Service, Case Number 83 Appellate, disclosed that on April 1, 1963, a brief in opposition to the subject's Petition for Certiorari was filed by the Solicitor General and on April 10, 1963, the Petition in this case was distributed to the Supreme Court Justices.

By Court List, handed down by the Supreme Court on April 22, 1963, the Court granted Certiorari, but stated it would be limited to the question which presented by the Petition which reads as follows:

"Wheter the provision of S 241 (a) (4) of the Immigration and Nationality Act of 1952 for deportation of an alien...who at any time after entry is convicted of two crimes' applies to an individual who was a naturalized citizen when convicted."

This matter will be decided at the Fall Term of the Court which convenes October 7, 1963.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

August 19, 1963

Title Frank Costello

Character — Anti-Racketeering

Reference is made to New York report of Special Agent [redacted] dated and captioned as above.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

August 19, 1963

FRANK COSTELLO
ANTI-RACKETEERING

Reference is made to the report of Special Agent [redacted] dated and captioned as above.

Set out below are characterizations of informants utilized in referenced report.

[redacted]

b7D

This document contains [illegible] recommendations [illegible] of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO :DIRECTOR, FBI (92-2869) DATE: 9/25/63

FROM :SAC, WFO (92-214) (P)

SUBJECT: FRANK COSTELLO, aka
AR
(OO:NEW YORK)

ReWFOlet to Bureau dated 6/26/63.

Further examination was made of the docket in the United States Supreme Court (USSC) on 9/16/63 in the case entitled "FRANK COSTELLO vs. Immigration Naturalization Service, Case Number 83 Appellate." The docket disclosed that on 8/26/63, a brief for the petitioner was filed by his attorneys, EDWARD BENNETT WILLIAMS and HAROLD UNGAR.

This brief, made available by [redacted] b7c
b7c [redacted] USSC, is transmitted herewith for the information of the Bureau. The Bureau is requested to return the brief to WFO when it has served its purpose so that it may be returned to the USSC.

WFO will continue to follow and report decision of the USSC in instant case.

(2)-Bureau (Encl. [redacted]) b7c
1-New York (92-2869)
1-WFO

ENCLOSURE attached

[redacted] b7c
(4)

Let WFO 10-14-63 (received)
Enc sent WFO 10-14-63

EX-116

REC-20 92-2869-97

10 SEP 27 1963

[redacted] b7c

SAC, Washington Field (92-214) 10/14/63

Director, FBI (92-2988) - 97

EX-108 REC-124

FRANK COSTELLO, aka
AR

[redacted] b7c

ReWFOlet 9/25/63.

Enclosed is the copy of the Brief for the Petitioner, re Frank Costello versus Immigration and Naturalization Service, for return to the Clerk of the U. S. Supreme Court.

Enc.

MAILED 19
OCT 14 1963
COMM-FBI

[redacted] b7c

(4)

Tolson
Belmont
Mohr
Casper
Callahan
Conrad
DeLoach
Evans
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Sullivan
Tavel
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UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York
November 20, 1963

[redacted]67C

Re: Francesco Saveria also known as
Frank Castiglia, Frank Costello

Frank Costello, Federal Bureau of Investigation Number 936 217, was born on January 26, 1891, at Cosenza, Calabria, Italy, to Luigi Castiglia and Mary Saverio Aloisa. He immigrated to the United States on April 2, 1895, and was naturalized on September 10, 1925.

On September 23, 1914, he married Loretta Geigerman. No children were born of this marriage.

Costello was named by Joseph Valachi as a former "capo" or "boss" of a "borgata" or "family" in "La Cosa Nostra", who was deposed by Vito Genovese.

[redacted]67D

Cover sheet filed in 92-6054-538

92-7869-
NOT RECORDED
128 MAR 31 1964

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15-7869

60 APR 1 1964

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 12/23/63

FROM : SAC, WFO (92-214)(P)

SUBJECT: FRANK COSTELLO, aka
AR
(OO:NY)

Re WFO letter to Bureau dated 9/25/63, and Bureau letter to WFO dated 10/14/63.

A copy of the petitioner's brief in the case entitled FRANK COSTELLO vs. Immigration and Naturalization Service, Case Number 83 Appellate, has been returned to the United States Supreme Court.

On 12/16/63, [redacted] advised that arguments in instant case were heard in the United States Supreme Court on 12/13/63, with Attorney EDWARD BENNETT WILLIAMS presenting argument in behalf of FRANK COSTELLO.

WFO will continue to follow this case in the Supreme Court and will advise the Bureau at such time as a decision is handed down.

(2) Bureau
1- New York (92-249)
1- WFO (92-214)

(4) [redacted]

REC-16 92-2869-98

1 DEC 24 1963

5 9 DEC 30 1963

FD-36 (Rev. 12-13-56)

FBI

Date: 2/17/64

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL (Priority or Method of Mailing)

TO: DIRECTOR, FBI (92-2869)

FROM: SAC, WFO (92-214) (RUC)

FRANK COSTELLO, Aka
AR
(OO:NY)

WFOlet to Bu 12/23/63.

Enclosed is a copy of a decision handed down by the U.S. Supreme Court on 2/17/64, in the case entitled FRANK COSTELLO vs. Immigration and Naturalization Service, Case Number 83, Appellate. The opinion was delivered by Mr. JUSTICE STEWART in which the Court reversed judgment of the U.S. Court of Appeals for the Second Circuit, ~~it~~ which had previously held that COSTELLO was subject to deportation. Mr. JUSTICE HARLAN took no part in the consideration or decision of this case.

Also enclosed is a copy of dissenting opinion delivered by Mr. JUSTICE WHITE, with whom Mr. JUSTICE CLARK concurred.

This matter has now been concluded in the Supreme Court.

3 - Bureau (Enc.2)
1 - New York (92-249)
1 - WFO

[redacted] b7C

92-2869-99

REC 114

25 FEB 1964

2 ENCLOSURES (5)

[redacted] b7C

AIRTEL

Sent _____ M Per _____

Special Agent in Charge

B 24 1964

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1963.

Frank Costello, Petitioner, v. Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February 17, 1964.]

Mr. Justice Stewart delivered the opinion of the Court.

Section 241 (a)(4) of the Immigration and Nationality Act of 1952 provides that "Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who . . . at any time after entry is convicted of two crimes involving moral turpitude . . . ."[1] The single question to be decided in the present case is whether this provision applies to a person who was a naturalized citizen at the time he was convicted of the crimes, but was later denaturalized.

The petitioner, born in Italy in 1891, was brought to the United States when he was four years old and has lived here ever since. He became a naturalized citizen in 1925. In 1954 he was convicted of two separate offenses of income tax evasion, and the convictions were ultimately

[1] "(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

. . . . . .

"(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;" 66 Stat. 204, as amended, 8 U. S. C. § 1251 (a)(4).

92-2869-99

affirmed by this Court. *Costello* v. *United States,* 350 U. S. 359. In 1959 his citizenship was revoked and his certificate of naturalization canceled on the ground that his citizenship had been acquired by willful misrepresentation. This Court affirmed the judgment of denaturalization. *Costello* v. *United States,* 365 U. S. 265.

In 1961 the Immigration and Naturalization Service commenced proceedings to deport the petitioner under § 241 (a)(4), and it is those proceedings which have culminated in the case now before us. The Special Inquiry Officer found the petitioner deportable; the Board of Immigration Appeals affirmed; and the Court of Appeals dismissed the petition for review, holding that the petitioner was subject to deportation under § 241 (a)(4) even though the two convictions relied upon to support deportation both occurred at a time when he was a naturalized citizen. 311 F. 2d 343. We granted certiorari to consider an important question of federal law.[2] For the reasons which follow, we reverse the judgment of the Court of Appeals.

At a semantic level, the controversy centers around the use of the present tense "is" in the clause "[[a]ny alien] who at any time after entry *is* convicted . . . ." The petitioner argues that this language permits deportation only of one who was an alien at the time of his convictions. The Court of Appeals totally rejected such a contention, holding that this statutory language, considered along with the phrase "at any time after entry" and with the broad legislative history, clearly permits deportation of a person now an alien who was convicted

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[2] The grant of certiorari was "limited to Question 1 presented by the petition which reads as follows:

" 'Whether the provision of § 241 (a)(4) of the Immigration and Nationality Act of 1952 for deportation of an "alien . . . who at any time after entry is convicted of two crimes" applies to an individual who was a naturalized citizen when convicted.' " 372 U. S. 975.

of the two crimes in question while he was a naturalized citizen. "There is no ambiguity," the court wrote, and "no room for interpretation or construction." 311 F. 2d., at 345. The court found additional support for its conclusion in *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521, a case which held that under a 1920 deportation law aliens who had been convicted of specified offenses were deportable even though the convictions had occurred at a time when the aliens held certificates of naturalization.

We take a different view. The statute construed in *Eichenlaub* differs from § 241 (a)(4) in several important respects. The law there involved was the Act of May 10, 1920, which provided that "All aliens who since August 1, 1914, have been or may hereafter be convicted" of violations of the Espionage Act of 1917, as amended, were to be deported, provided the Secretary of Labor after a hearing found them to be undesirable residents of the United States.[3] The Court read this language as unambiguously authorizing deportation, regardless of the aliens' status at the time they were convicted. It is evident from what was said in the opinion that the Court was aided consid-

[3] The relevant paragraphs of the Act of May 10, 1920, read as follows:

". . . That aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall, upon the warrant of the Secretary of Labor, be taken into his custody and deported . . . if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States, to wit:

"(1) All aliens who are now interned under § 4067 of the Revised Statutes . . . .

"(2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts . . . namely:

"(a) An Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws. . . .'" 41 Stat. 593–594. See 8 U. S. C. § 157.

erably in its search for the proper construction of the statute by Congress' use of the past tense in the phrase "have been or may hereafter be," and the fact that the only limitation which Congress placed upon the time of conviction was that it be "since August 1, 1914."[4] The Court also found specific legislative history to support its conclusion. As the Congressional Committee Reports demonstrated, the 1920 law was a special statute dealing with sabotage and espionage, originally enacted in order to deport "some or all of about 500 aliens who were then interned as dangerous enemy aliens and who might be found, after hearings, to be undesirable residents, and also to deport some or all of about 150 other aliens who, during World War I, had been convicted of violations of the Espionage Act or other national security measures, and who might be found, after hearings, to be undesirable residents." 338 U. S., at 532. The Court therefore concluded that Congress, when it enacted the statute, had expressed a clear intent to group together denaturalized citizens along with aliens who had never acquired citizenship and to deport them for specific crimes involving national security occurring after a specific date at the beginning of World War I.

Neither the language nor the history of § 241 (a)(4) lend themselves so easily to a similar construction. The subsection employs neither a past tense verb nor a single specific time limitation. The petitioner's construction—that the language permits deportation only of a person

[4] "The proper scope of the Act of 1920 as applied to these cases is found in the ordinary meaning of its words." 338 U. S., at 527. "The statutory language which says that 'aliens who since August 1, 1914, *have been or may hereafter be convicted* . . .' (emphasis supplied), refers to the requirement that the deportations be applicable to all persons who had been convicted of certain enumerated offenses since about the beginning of World War I (August 1, 1914), whether those convictions were had before or after May 10, 1920." 338 U. S., at 530.

who was an alien at the time of his convictions, and the Court of Appeals' construction—that the language permits deportation of a person now an alien who at any time after entry has been convicted of two crimes, regardless of his status at the time of the convictions—are both possible readings of the statute, as the respondent has conceded in brief and oral argument.

We agree with the Court of Appeals that the tense of the verb "be" is not, considered alone, dispositive.[5] On the other hand, we disagree with that court's reliance on the phrase "at any time after entry" in § 241 (a)(4) to support the conclusion that an alien is deportable for post-entry conduct whether or not he was an alien at the time of conviction. Since § 212 (a)(9) [6] provides for the *exclusion* of aliens convicted of crimes of moral turpitude, and any excludable alien who nevertheless enters the country is deportable under § 241 (a)(1),[7] it seems just as logical to conclude that the purpose of the phrase "at any time after entry" in § 241 (a)(4) was simply to make clear that § 241 (a)(4) authorizes the deportation of aliens who were not originally excludable, but were convicted after entry.

There is nothing in the legislative history of § 241 (a)(4) of so specific a nature as to resolve the ambiguity of the statutory language. The general legislative purpose underlying enactment of § 241 (a)(4) was to broaden the provisions governing deportation, "particularly those re-

[5] Comparing the "is" of § 241 (a)(4) with the various forms of "be" employed in other subsections of § 241 (a) is hardly helpful. It is as likely that the differences in wording found in these subsections reflect differences in style attributable to the various antecedents of the several provisions, as it is that the use of the present tense in § 241 (a)(4) reflects a specific congressional intent that that particular subsection, in contrast to the others, was not to be applied to people in the petitioner's position.

[6] 8 U. S. C. § 1182 (a)(9).

[7] 8 U. S. C. § 1251 (a)(1).

ferring to criminal and subversive aliens." [8] But reference to such a generalized purpose does little to promote resolution of the specific problem before us, of which there was absolutely no mention in the Committee Reports or other legislative materials concerning § 241 (a)(4).[9]

Although no legislative history illumines our problem, considerable light is forthcoming from another provision of the statute itself. Section 241 (b)(2), made specifically applicable to § 241 (a)(4), provides that deportation shall not take place "if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation . . . that such alien not to be deported." [10] As another court has correctly ob-

[8] See Commentary on the Immigration and Nationality Act, Walter M. Besterman, Legislative Assistant to the House Committee on the Judiciary, 8 U. S. C., pt. I, p. 61. This commentator makes no reference to the problem before us, although he does refer to several innovations in the Act broadening its scope: "Many of the grounds for deportation specified in the new law are retroactive in effect. They apply to the alien notwithstanding the fact that he may have entered the United States prior to the enactment of the 1952 law. Also, he may be found now to be deportable by reason of facts which occurred prior to the enactment of this Act [June 27, 1952.]" Besterman, *ibid.*

[9] See H. R. Rep. No. 1365, 83d Cong., 2d Sess. 60 (1952); S. Rep. No. 1515, 81st Cong., 2d Sess. 390–392 (1950); S. Rep. No. 1137, 82d Cong., 2d Sess. 21 (1952); H. R. Rep. No. 2096 (Conference Report), 82d Cong., 2d Sess. 127 (1952). See also Immigration and Naturalization Service, Analysis of S. 3455, 81st Cong., 2d Sess. (1950), Vol. 5, pp. 241–243 through 241–246; and Analysis of S. 716, 82d Cong., 1st Sess. (1951), Vol. 4, pp. 241–242 through 241–244. See generally, Besterman, note 8, *supra*, pp. 1–91.

[10] "The provisions of subsection (a)(4) of this section respecting the deportation of an alien convicted of a crime or crimes shall not apply if the court sentencing such aliens for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior

served, "It seems plain that the qualifying provisions of subsection (b) are an important part of the legislative scheme expressed in subsection (a) (4). While that section makes a conviction there referred to ground for deportation, it is qualified in an important manner by the provision of subsection (b) (2) that if the court sentencing the alien makes the recommendation mentioned, then the provisions of subsection (a) (4) do not apply." *Gubbels* v. *Hoy*, 261 F. 2d 952, 954.[11]

Yet if § 241 (a)(4) were construed to apply to those convicted when they were naturalized citizens, the protective provisions of § 241 (b)(2) would, as to them, become a dead letter. A naturalized citizen would not "at the time of first imposing judgment or passing sentence," or presumably "within thirty days thereafter," be an "alien" who could seek to invoke the protections of this section of the law. Until denaturalized, he would still be a citizen for all purposes, and a sentencing court would lack jurisdiction to make the recommendation provided by § 241 (b)(2).[12] We would hesitate long before

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to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter." 8 U. S. C. § 1251 (b)(2).

[11] In *Gubbels* the Court of Appeals for the Ninth Circuit held that court-martial convictions could not provide a basis for deportation under § 241 (a)(4) because a military court is not so constituted as to make the privilege accorded by § 241 (b)(2) available to a convicted alien.

[12] It has been suggested that the petitioner, or one similarly situated, was at the time of the conviction chargeable with knowledge that he had procured his naturalization illegally, and that he could have therefore proceeded to seek a recommendation from the sentencing judge under § 241 (b)(2). This suggestion seems not only practically unrealistic, but technically untenable. It has been held that only a competent court in appropriate proceedings can nullify a status of naturalized citizenship. *United States* v. *Stephan*, 50 F. Supp. 445.

adopting a construction of § 241 (a)(4) which would, with respect to an entire class of aliens, completely nullify a procedure so intrinsic a part of the legislative scheme.[13]

If, however, despite the impact of § 241 (b)(2), it should still be thought that the language of § 241 (a)(4) itself and the absence of legislative history continued to leave the matter in some doubt, we would nonetheless be constrained by accepted principles of statutory construction in this area of the law to resolve that doubt in favor of the petitioner. As the Court has emphasized, "deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael,* 332 U. S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used." *Fong Haw Tan* v. *Phelan,* 333 U. S. 6, 10.

Adoption of the petitioner's construction of § 241 (a) (4) does not end our inquiry, however, for the respondent urges affirmance of the finding of deportability on an alternative ground, not reached by the Court of Appeals. The argument is that the petitioner is deportable because § 340 (a) of the Immigration and Nationality Act of 1952, under which the petitioner's citizenship was canceled, provides that an order of denaturalization "shall be effective as of the original date" of the naturalization

[13] The *Eichenlaub* statute carried with it no such qualifying provision, which reinforces the conclusion that the decision in *Eichenlaub* is of no basic relevance to the issue here. See note 3, *supra.* Section 19 of the Immigration Act of 1917, 39 Stat. 874, the predecessor of § 241 (a)(4), on the other hand, did contain a relief provision similar to § 241 (b)(2). See 39 Stat. 889–890.

order.[14] Under this so-called "relation-back" theory, it is said that cancellation of the petitioner's certificate of naturalization was "effective" as of 1925, the year of his original naturalization, that he was therefore an alien as a matter of law at the time of his convictions in 1954, and that he is accordingly deportable under § 241 (a)(4) even if that provision requires alienage at the time of the convictions.

We reject this theory for much the same reasons which have prompted our construction of § 241 (a)(4). There is nothing in the language of § 340 (a), and not a single indication in the copious legislative history of the 1952 Act, to suggest that Congress intended the relation-back language of § 340 (a) to apply to the general deportation provisions of the Act. In view of the complete absence of any indication to the contrary, it would appear that in adopting the relation-back language of § 340 (a) Congress intended to do no more than to codify existing case law. Several cases before 1952 had held that an order of denaturalization made the original naturalization a nullity, *Johannessen* v. *United States*, 225 U. S. 227, and that, for the purpose of determining rights of derivative citizenship, denaturalization related back to the date of naturalization. *Battaglino* v. *Marshall*, 172 U. S. 979, 981; *Rosenberg* v. *United States*, 60 F. 2d 475.

The Second Circuit was alone among the federal courts in thinking that this *nunc pro tunc* concept which had been judicially developed in the denaturalization cases

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[14] "It shall be the duty of the United States district attorneys for the respective districts . . . to institute proceedings . . . for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization . . . , and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . ." 8 U. S. C. § 1451 (a).

could properly be related to the task of construing a deportation statute. *Eichenlaub* v. *Watkins,* 167 F. 2d 659; *Willumeit* v. *Watkins,* 171 F. 2d 773. And when those cases came here, this Court pointedly declined to adopt the Second Circuit's reasoning. *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 529–530.[15] Following this Court's decision in *Eichenlaub,* the Sixth Circuit expressly refused to apply to a general deportation statute the relation-back principle of the denaturalization cases, in determining when there had been an "entry" for purposes of the predecessor of § 241 (a)(4) in the 1917 Act. *Brancato* v. *Lehmann,* 239 F. 2d 663.[16]

The relation-back concept is a legal fiction at best, and even the respondent concedes that it cannot be "mechanically applied." With respect to denaturalization itself, Congress clearly adopted the concept in enacting § 340 (a). But in the absence of specific legislative history to the contrary, we are unwilling to attribute to Congress a purpose to extend this fiction to the deportation provisions of § 241 (a)(4). This Court declined to apply the fiction in a deportation context in the *Eichenlaub* case, and we decline to do so now.

The argument is made that it is anomalous to hold that a person found to have procured his naturalization by willful misrepresentation is not subject to deportation, although he would be deportable if he had never been

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[15] The companion case, *Willumeit* v. *Shaughnessy,* was decided in the same opinion. 338 U. S. 521.

[16] Brancato first entered the United States in 1914; he was naturalized in 1929; he then left the United States and returned in 1930; he was convicted of a crime involving moral turpitude in 1932; he was denaturalized in 1939. The question was whether his conviction in 1932 was within five years after an "entry," as defined by the statute. The Court of Appeals held that the cancellation of his citizenship in 1939 related back to 1929 for purposes of denaturalization, but not for purposes of the deportation statute, and that his return to the United States in 1930 was therefore not an "entry" in that year.

naturalized at all. But it is not at all certain that this petitioner *would* be deportable today if he had never acquired naturalized citizenship. The petitioner points out that if he had held alienage status at the time of his trial for income tax evasion, he could have offered to plead guilty to one count of the indictment in return for a *nolle prosequi* of the other counts, and that conviction on but one count would not have made him subject to deportation under § 241 (a)(4). Even more important, had petitioner been an alien at the time of his convictions, he could have availed himself of the supplementary relief procedure provided for in § 241 (b)(2). In other words, to hold that under the relation-back language of § 340 (a) the petitioner was an "alien" at the time of his convictions would go much further than merely preventing him from benefiting from his invalid naturalization; it would put him in a much more disadvantageous position than he would have occupied if he had never acquired a naturalization certificate at all.

Moreover, if the relation-back doctrine were applicable in this case, it would be applicable as well, as the respondent's counsel conceded in oral argument, in the case of one whose original naturalization was not fraudulent, but simply legally invalid upon some technical ground.[17] In this area of the law, involving as it may the equivalent of banishment or exile, we do well to eschew technicalities and fictions and to deal instead with realities. The reality is that the petitioner's convictions occurred when he was a naturalized citizen, as he had been for almost 30 years.

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[17] Section 340 (a) was amended in 1961 to provide for cancellation of citizenship on the ground that it was "illegally procured." Act of September 26, 1961, § 18, 75 Stat. 656. In *Brancato* v. *Lehmann*, 239 F. 2d 663, the appellant's citizenship had been canceled because his original petition for naturalization "was not verified by the affidavits of two credible witnesses," as required by the 1906 Act.

If Congress had wanted the relation-back doctrine of § 340 (a) to apply to the deportation provisions of § 241 (a)(4), and thus to render nugatory and meaningless for an entire class of aliens the protections of § 241 (b)(2), Congress could easily have said so. But there is no evidence whatever that the question was even considered. If and when Congress gives thought to the matter, it might well draw distinctions based upon the ground for denaturalization, the nature of the criminal convictions, and the time interval between naturalization and conviction, or between conviction and denaturalization.[18] But such differentiations are not for this Court to make.

Reversed.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

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[18] See Mr. Justice Frankfurter's dissenting opinion in *Eichenlaub* v. *Shaughnessy*, 338 U. S., at 533, 536–537.

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1963.

Frank Costello, Petitioner, v. Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February 17, 1964.]

Mr. Justice White, with whom Mr. Justice Clark concurs, dissenting.

It has not been contended, and the majority does not now hold, that there is a constitutional impediment to the deportation of an alien who is convicted of the commission of two crimes involving moral turpitude, regardless of his citizenship status at the time the crimes were committed. The question in this case is whether §§ 241 and 340 of the Immigration and Nationality Act of 1952 manifest a congressional intent to achieve such a result. I find the Court's decision inconsistent with the language of the statute, with its history and background, and with any reasonable purpose which can be ascribed to Congress in enacting it.

I.

Petitioner, born in Italy, entered the United States as an alien in 1895, and in 1925 became a naturalized citizen of this country. In 1954 he was convicted on two separate counts of having attempted to defeat and evade the payment of income taxes by filing false and fraudulent returns for the years 1948 and 1949. The convictions were affirmed by this Court. *Costello* v. *United States*, 350 U. S. 359. In 1959 his certificate of naturalization was canceled on the ground that it had been procured by willful misrepresentation, and this judgment was also affirmed. *Costello* v. *United States*, 365 U. S. 265. The United States has now brought deportation proceedings

under § 241 (a)(4) of the Immigration and Nationality Act of 1952, which provides that:

> "Any alien in the United States . . . shall . . . be deported . . . who at any time after entry is convicted of two crimes involving moral turpitude . . . ."

This description of the deportable alien fits Costello exactly and unambiguously. He is an alien now and was an alien at the time of entry, an alien who "at any time after entry is convicted of two crimes . . . ." The all-embracing language of the section recognizes no exception based upon the time the crimes were committed.

The qualification which the Court carves out of § 241 (a)(4), requiring that the convictions occur at a time when an alien is not a citizen, is not found in the statute itself and can be achieved only at the expense of the purpose of the statute which is clearly evident from its terms and history and which should control its construction if the Court is not to stray from its judicial function.[1]

Pursuant to its power, unquestioned here, to prescribe the conditions for continued alien presence in this country, Congress has enacted § 241 (a) which embodies a determination that certain classes of aliens, by reason of their acts and conduct, are no longer desirable residents of this country. The significance of the provision in § 241 (a)(4) dealing with aliens who, any time after entry, commit two crimes involving moral turpitude is that in Congress' judgment the commission of two such crimes is indicative of a confirmed criminal type from

[1] This Court has repeatedly stressed the principle that in construing statutes "the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *United States* v. *Whitridge*, 197 U. S. 135, 143. See *United States* v. *Shirey*, 359 U. S. 255, 260–261; *United States* v. *CIO*, 335 U. S. 106, 112; *United States* v. *American Trucking Assn.*, 310 U. S. 534, 543; *Ozawa* v. *United States*, 260 U. S. 178, 194.

whom the privilege of remaining in this country is to be withdrawn. The House Committee which recommended the predecessor to § 241 (a)(4) in § 19 of the Immigration Act of 1919 agreed unanimously that "those who committed a second crime involving moral turpitude showed then a criminal heart and a criminal tendency and they should be deported." 53 Cong. Rec. 5168. It is not for us to reassess the wisdom of this congressional judgment, which was reaffirmed in the 1952 Act. The function of the dual conviction standard being to identify those individuals who are presumed to possess lawless propensities and who are therefore undesirable, the circumstance of nominal citizenship status at the time of conviction is beside the point.

In certain respects § 241 (a) redefined the criteria for deportability. Under subsection (d), § 241 was to be applied to an alien even though the conduct which placed him within a deportable class took place prior to the enactment of the section and even though that conduct would not have forfeited residential privileges under the previous law. This was the holding of the Court in *Lehmann* v. *Carson*, 353 U. S. 685, where an alien was held deportable under the 1952 Act for the prior commission of two crimes although under the former law a conditional pardon given for one of them would have saved the alien from deportation. Given *Lehmann* v. *Carson* and like cases upholding the power of Congress to legislate in this manner,[2] the legislative intention to provide current standards for deportability is not to be frustrated by importing irrelevant considerations such as the previous state of the law or the fact of technical citizenship at the time the crimes were committed. Neither bears

[2] *Marcello* v. *Bonds*, 349 U. S. 302; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Mahler* v. *Eby*, 264 U. S. 32; *Ng Fung Ho* v. *White*, 259 U. S. 276; *Bugajewitz* v. *Adams*, 228 U. S. 585.

upon the question of whether the alien's past conduct brings him within the present definition of the deportable alien.

Costello is an alien now, and his criminal propensities remain the same even though the crimes for which he has been convicted were committed while he was a nominal citizen. Nor is his present undesirability diminished by the fact that his citizenship upon which he relies was obtained by fraud and at a time when the law, as it has since 1917, provided for deportation upon the commission of two crimes involving moral turpitude.

Today's holding has an anomalous result. The alien who has not become a citizen is deportable for the commission of two crimes. But not so the alien who has committed two crimes and has also been denaturalized for fraud practiced in procuring his citizenship.[3] His fraud becomes his ready and effective shield, a result which I cannot believe Congress intended to enact into law.

II.

The foregoing interpretation of § 241 (a)(4) is fortified by an examination of the background against which it was enacted. The same issue that is presented by the instant case was resolved by this Court in 1950, a little over two years before the final passage of the 1952 Immigration and Nationality Act, in *Eichenlaub* v. *Shaughnessy* and its companion case *Willumeit* v. *Shaughnessy*, 338 U. S. 521. Eichenlaub and Willumeit were both born in Germany and entered this country in 1930 and 1925, respectively. In the 1930's they were naturalized, but their naturalization certificates were canceled for fraud in 1944. In 1941 and 1942, during the time they enjoyed

[3] The Court points out that there may be cases in which this anomaly will not result. This observation does not alter the fact that it does exist in this case, and will exist in all cases where the revocation of the naturalization certificate is for fraudulent conduct.

citizenship status, they had been convicted of violations of the Espionage Act of 1917. The question was whether they were deportable under the Act of May 10, 1920, which declared deportable as undesirable residents:

> "All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation [of the Espionage Act, among others]."

As in the instant case Eichenlaub and Willumeit argued that deportability is conditioned on alienage status at the time of conviction.[4] This Court's answer to that contention was:

> "If the Act of 1920 had been intended to initiate the distinction here urged by the relators, it is likely that the change would have been made by express provision for it. We find nothing in its legislative history that suggests a congressional intent to distinguish between two such groups of undesirable criminals." 338 U. S., at 532.

Willumeit argued that since the Act of 1920 was occasioned by a desire to rid the country of two specific groups of enemy aliens not deportable under then existing statutes, it should be narrowly interpreted. The Court agreed as to the purpose of the Act but reached a different conclusion as to the principle of statutory interpretation which followed therefrom:

> "It is hardly conceivable that, under those circumstances, Congress, without expressly saying so, intended to prevent [the deportation of] alien offenders merely because they had received the re-

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[4] Dr. Willumeit contended that: "The language shows that the alien must be an 'alien' at the time that he 'may . . . be convicted.' The use of the words 'aliens who may *be*' convicted indicates that the alien must *'be'* an alien at the time of conviction. There is no other grammatical possibility." Brief for the Petitioner, *Willumeit* v. *Shaughnessy*, No. 82, October Term, 1949, p. 7.

spective convictions at times when they held certificates of naturalization, later canceled for fraud. To do so would permit the denaturalized aliens to set up a canceled fraudulent status as a defense, and successfully to claim benefits and advantages under it. Congress, in 1920, evidently wanted to provide a means by which to free the United States of residents who (1) had been or thereafter were convicted of certain offenses against the security of the United States, (2) had been or thereafter were found, after hearing, to be undesirable residents of the United States, and (3) being aliens were subject to deportation. Congress said just that." *Id.*, at 532–533.

The *Eichenlaub* case, decided at the time the 1952 Act was under consideration, carried the clear message that the courts would not impute to the legislature an intent to favor twice-convicted aliens whose citizenship has been canceled for fraud over those who never held citizenship status and that Congress must say so if it intended to create a distinction based on citizenship status at the time of conviction for crimes on which deportation proceedings might be based. In the face of this message Congress proceeded to enact § 241 (a)(4) declaring that "Any alien . . . shall . . . be deported . . . who at any time after entry is convicted of two crimes involving moral turpitude." [5] Even if as a matter of abstract argument

[5] The subcommittee of the House and Senate Judiciary Committees were aware of the *Eichenlaub* decision and of its bearing on § 241 (a)(4) of the pending statute. In answer to the objection that certain provisions of the proposed statute were *ex post facto* and therefore unconstitutional, Mr. Richard Arens, Staff Director of the Senate Subcommittee on S. 716 stated:

"What do you mean by ex post facto legislation? Does not the term 'ex post facto' by its historical origin and by the pronouncements of the Court in such cases as Eichenlaub v. Shaughnessy and these other cases, including the Eby case to which we alluded a few

about the meaning of these words the majority's opinion is defensible, which I don't think it is, it fails completely as a matter of interpretation of this statute in the context of its enactment.

The petitioner contends that *Eichenlaub* is distinguishable on the ground that the statute in that case applied to aliens who "have been or may hereafter be" convicted, whereas § 241 (a)(4) refers to any alien who "is" convicted. His argument is that by use of dual verbs the statute in *Eichenlaub* explicitly referred to two groups of aliens, those who were and those who were not citizens when convicted. In his view, therefore, the decision in *Eichenlaub* must have rested upon the "have been" leg of the statute. But both the majority and the dissent in *Eichenlaub* recognized that the use of past and present verbs in the 1920 Act was necessary because that Act provided for two definite periods of time—between August 1, 1914, and May 10, 1920; and after 1920—in which the convictions might occur.[6] The coalescence of two verbs

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moments ago, establish beyond peradventure of doubt that that ex post facto has no applicability to an immigration procedure?"

Joint Hearings before the Subcommittees of the Committees on the Judiciary, Congress of the United States, 82d Cong., 1st Sess., on S. 716, H. R. 2379, and H. R. 2816, at 694.

[6] The opinion of the Court observed: "The statutory language which says that 'aliens who since August 1, 1914, *have been or may hereafter be convicted* . . .' refers to the requirement that the deportations be applicable to all persons who had been convicted of certain enumerated offenses since about the beginning of World War I (August 1, 1914), whether those convictions were had before or after May 10, 1920." 338 U. S., at 530.

And the dissent states: "The Act of May 10, 1920, provides that 'All aliens who since August 1, 1914, have been or may hereafter be convicted' of certain offenses shall be deported upon a finding that they are 'undesirable residents of the United States.' *Since neither of the petitioners herein was found to 'have been' convicted of any offense before passage of the Act, they come, it is urged, within the alternative prerequisite.*" 338 U. S., at 534. (Emphasis added.)

was thus unrelated to citizenship status at the time of conviction.[7]

III.

Whatever doubt as to congressional intent the majority may have after examining § 241 (a) standing alone should be dispelled by § 340 (a) of the Immigration and Nationality Act, which provides that revocation of a naturalization certificate relates back to, and is deemed "effective as of the original date of the order and certificate." [8] Under this section petitioner was not a citizen in 1954 because he did not become a citizen in 1924. It is therefore useless to talk about whether § 241 (a)(4)

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[7] Petitioner also argues that the absence of a "has been" provision in § 241 (a)(4) is significant because of the fact that most of the other grounds for deportation based on past conduct are stated in the alternative perfect and indicative verb forms: "is or has been," or "is or shall have been." In petitioner's view the reason for this distinction is that under the "is or has been" paragraphs, citizenship status at the time of the act or event is irrelevant, but the "is" language of paragraph 4 authorizes deportation only if alienage status and the basis for deportability coincide in time. This dichotomy of deportability tests would mean that a denaturalized alien could be deported for being convicted of carrying a sawed-off shotgun, or being connected with the management of a house of prostitution during the time he was a citizen, but not for two convictions of crimes involving moral turpitude. The absurdity of imputing to Congress the intent to achieve such a result is too obvious to require more.

[8] "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings . . . for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by wilful misrepresentation, *and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate* . . . ." (Emphasis added.)

makes an exception for aliens who were citizens when convicted because § 340 makes clear that in Congress' view they were always aliens. The distinction which the Court reads into § 241 is a distinction which § 340 declares nonexistent.

The Court takes the position that the relation-back provision of § 340 (a) was intended to deal only with problems of derivative citizenship, having nothing to do with deportability. Their argument is that prior to the passage of the Act the judicial doctrine of relation-back was so limited, and that there is no evidence that § 340 was intended to expand its coverage. I find both branches of the argument untenable.

Prior to 1952 *Rosenberg* v. *United States,* 60 F. 2d 475 (C. A. 3d Cir. 1932), and *Battaglino* v. *Marshall,* 172 F. 2d 979 (C. A. 2d Cir. 1949),[9] held that members of a denaturalized alien's family derive through him no citizenship rights because "the certificate of naturalization was simply a paper fraud and conferred at the time of its grant no rights whatsoever. . . ." *Rosenberg* v. *United States,* 60 F. 2d at 476. But the principle stated in those cases was by no means limited to problems of derivative citizenship, as is shown by the Second Circuit's decisions in *Eichenlaub* v. *Watkins,* 167 F. 2d 659 (C. A. 2d Cir. 1948), aff'd *sub nom. Eichenlaub* v. *Shaughnessy,* 338

[9] Revocation of fraudulently obtained naturalization certificates was authorized by statute in 1906; however, not until the 1952 Act was there an express statutory provision that revocations were to have retroactive effect. The judicial doctrine of relation-back developed in the interim. Although *Rosenberg* was the first case to apply the doctrine, dictum in this Court's decisions as early as 1912 implied its existence. In *Johannessen* v. *United States,* 225 U. S. 227, 240–241, this Court cited with approval the following language from a lower court opinion: "It is [the applicant's] province, and he is bound, to see that the jurisdictional facts upon which the grant is predicated actually exist, and if they do not he takes nothing by his paper grant." Cf. *Luria* v. *United States,* 231 U. S. 9, 24.

U. S. 521, and *Willumeit* v. *Watkins*, 171 F. 2d 773 (C. A. 2d Cir. 1949), aff'd *sub nom. Eichenlaub* v. *Shaughnessy*, 338 U. S. 521. These two cases, which, as shown earlier, involved the same issue as the instant case, were decided by the Court of Appeals on the theory that "the decree of naturalization relates back, at least for this purpose. Cf. *Rosenberg* v. *United States*, 3 Cir., 60 F. 2d 475." [10] On appeal the decisions were affirmed on other grounds, the Court finding it unnecessary to pass on the relation-back issue.

The development of the relation-back theory did not go unnoticed by Congress. Section 338 (d) of the Nationality Act of 1940 contained a provision saving derivative citizenship rights where the revocation was not occasioned by actual fraud. And in a report on its study of the Immigration and Nationality Laws published April 20, 1950, the Senate Judiciary Committee summarized then-existing law as follows:

> "The effect of a decree of denaturalization, as distinguished from expatriation or forfeiture of citizenship, is to declare that the 'naturalized' person never was in fact naturalized, because either by fraud or illegality the statutory prerequisites were not met. The naturalization laws make certain reservations, saving the naturalization of children who derive citizenship from a parent from the alienage which they would otherwise incur because of the fraudulent or illegal naturalization." [11]

On the same day that the Senate Judiciary Committee published its report, the chairman of that Committee, Senator McCarran introduced an omnibus bill, S. 3455, designed to incorporate all immigration and naturalization laws into one statute. That bill did not contain the

[10] *Eichenlaub* v. *Watkins*, 167 F. 2d 659, 660.

[11] S. Rep. No. 1515, 81st Cong., 2d Sess., p. 755.

general relation-back clause of the present § 340 (a). However, § 339 (f), substantially identical to § 340 (f) of the bill finally enacted, did provide for the consequences of denaturalization upon derivative rights. Had this bill been enacted, therefore, the legislative relation-back rule would have been limited to derivative citizenship matters, the problems of deportation being governed solely by the judicial doctrine, which was of course subject to change by the courts. However, Senator McCarran's next bill, S. 2055, introduced on August 27, 1951, contained not only a derivative citizenship relation-back clause (now § 340 (f)) such as had appeared in the earlier S. 3455, but also the general clause of § 340 (a).

The Government's theory as to the reason for this change is that since this Court's failure to pass on the relation-back rule in *Eichenlaub* cast doubt upon its continuing vitality as a judicial doctrine, Congress felt constrained to insure against the doctrine's being limited to derivative citizenship questions. While this is a reasonable suggestion it is neither expressly supported nor rejected by the legislative history. This much, however, is clear: Prior to the passage of the 1952 Act four cases in the Courts of Appeals had applied the relation-back principle; two of these cases dealt with derivative citizenship rights and the other two with deportability. The 1952 Act not only dealt specifically with derivative citizenship but separately and expressly provided generally that denaturalization for concealment or willful misrepresentation shall be effective as of the date of the naturalization order. Congress thus provided its own relation-back doctrine and under it, unless it is to be rendered meaningless, Costello never legally became a citizen. He remained an alien and was an alien when he was convicted of the two crimes for which he has been ordered deported.

IV.

The majority finds support for its holding in supposed implications from the recommendation provision of § 241 (b). In the Court's view the recommendation provision was intended to apply to all cases in which an alien might be deportable under § 241 (a)(4); the unavailability of this provision to one who was not an alien at the time of the second conviction is therefore evidence that Congress did not intend such aliens to be deportable, it is asserted. The Court thus holds that the authority to deport under subsection (a)(4) is limited to those cases in which the deportee can invoke a recommendation against deportation.

My view of § 241 (b) is somewhat different. Congress defined in § 241 (a) the criteria for deportability and described those classes of aliens who were no longer qualified to stay in this country by reason of their past acts and conduct. But in the case of § 241 (a)(4) aliens, those convicted of crimes involving moral turpitude, Congress did not make its own judgment final in every case. Although the alien might have been convicted of two crimes and therefore fell within the § 241 (a)(4) category, the sentencing judge was given the power to order that the alien not be deported. The Court's view is that deportability in every case must depend upon the opportunity to exercise the power given in § 241 (b), as well as upon its actual exercise to forbid deportation. But I think the Court misconceives the scope and intent of § 241 (b), which is not coextensive with § 241 (a)(4) and which has nothing to do with the coverage of the latter section.

Section 241 (a)(4) speaks in general terms and seems to apply to postentry convictions for any two crimes involving moral turpitude. But there are other para-

graphs of § 241 (a) which specify particular crimes in themselves justifying deportation. Some of these crimes may not involve moral turpitude; others may, and therefore fall within the literal language of § 241 (a)(4). A recommendation against deportation of aliens convicted of these latter crimes is nonetheless ineffective, either because subsection (b) explicitly excludes the crime from its coverage, as in the case of narcotics offenses,[12] or because the offense is separately listed in a subsection other than § 241(a)(4).[13] Obviously, therefore, Congress did not intend judicial review of deportability in every case where the commission of crime, whether involving moral turpitude or not, is the basis of the action.

Moreover, there are other situations within § 241(a)(4) where § 241 (b) procedures are unavailable and deportation nevertheless must follow. Under § 241 (a)(4) deportation may be based upon postentry convictions whether occurring in this country or abroad. The requirement of the prior law that postentry crimes be com-

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[12] Subsection (b) states:

"The provisions of subsection (a)(4) of this section respecting the deportation of an alien convicted of a crime or crimes shall not apply . . . if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter. The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a)(11) of this section."

[13] See *Jew Tem* v. *Immigration and Naturalization Service*, 307 F. 2d 832 (C. A. 9th Cir.) Cf. *United States ex rel. De Luca* v. *O'Rourke*, 213 F. 2d 759 (C. A. 8th Cir.); *Ex parte Robles-Rubio*, 119 F. Supp. 610 (D. C. N. D. Cal.).

mitted in this country was eliminated in the 1952 Act.[14] It seems obvious that § 241 (b) procedures would be unavailable in those cases where the crimes are committed abroad; yet it is difficult to believe that deporta-

[14] Section 19 of the 1917 Act specified three categories of aliens deportable because of conviction for crimes involving moral turpitude. The classes of aliens involved were the following:

(1) "[A]ny alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States."

(2) "[Any alien] who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry."

(3) "[A]ny alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude."

Under the 1952 Act § 241 (a)(4) does not deal with deportation for crimes committed prior to entry, but the phrase "in this country," qualifying postentry convictions has been eliminated. As originally introduced by Senator McCarran, S. 2055 showed on its face that deportability for conviction of two crimes involving moral turpitude was not predicated on convictions obtained in this country. Section 241(a)(4) of that bill read:

"Any alien in the United States . . . shall . . . be deported who—

. . . . . .

"within five years after entry is convicted of a crime involving moral turpitude and either sentenced to confinement or confined therefor in a prison or corrective institution for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; or at any time is convicted *in the United States* of any criminal offense, not comprehended within any of the foregoing, if the Attorney General in his discretion concludes that the alien is an undesirable resident of the United States." (Emphasis added.)

The clause authorizing deportation in the discretion of the Attorney General for conviction in the United States of any criminal offense was eliminated after a conference between Senators McCarran and Humphrey. 90 Cong. Rec. 5756, 5758.

tion is proscribed in these cases. This was the view of the Court of Appeals for the Third Circuit under the prior law where the provision for deportation for crimes committed abroad prior to entry [15] was ostensibly subject to the terms of § 241 (b)'s predecessor providing the same broad judicial veto.[16]

I think Costello's is another case in which Congress could not have intended the unavailability of § 241 (b) procedures to bar deportation. Under the Court's view no denaturalized alien can be deported for the commission of two or more crimes while a citizen. Congress intended no such result. It intended, as § 241 (b) expressly says, to bar deportation only when there was a judicial determination of nondeportability. There is none here. In Costello's case, and those like it, the judge has no opportunity to exercise his power under § 241 (b)

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[15] *Rasmussen* v. *Robinson*, 163 F. 2d 732, 734 (C. A. 3d Cir.) stated that:

"[T]his portion of the statute provides that the recommendation shall be made to the 'Attorney General'. The 'Attorney General' referred to is the Attorney General of the United States. The 'recommendation' is mandatory upon him. . . . It follows that the judges who are to make the recommendation are to be judges of courts of the United States or of the States for Congress certainly did not intend to impose the mandate of a foreign judiciary on the Attorney General of the United States. This means that crimes committed prior to entry, not within the United States, are not within the proviso, but crimes committed by an alien, in the United States, prior to entry, are within the proviso." Cf. *United States* v. *Hughes*, 116 F. 2d 613 (C. A. 3d Cir.).

[16] Section 19 of the 1917 Act provided:

"[T]he provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence . . . make a recommendation . . . that such alien not be deported."

because the convicted defendant, actually an alien under the law, appears before him with a certificate of citizenship, obtained by his own fraud, and prefers to continue the masquerade and to claim the protections of citizenship. In these circumstances, the lack of judicial consideration of Costello's deportability should not be equated to a judge's determination of nondeportability. This is especially true here since Costello knew of the denaturalization proceedings which had been instituted against him prior to his two convictions for tax fraud.[17]

Since I find no inconsistency between the language, background and purpose of § 241 (a)(4) on the one hand, and implications from § 241 (b) on the other, I regard the Court's reliance on *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, as misplaced. I have no quarrel with the doctrine that where the Court is unable to discern the intent of Congress, ambiguities should be resolved in favor of the deportee, but here there is a clear expression of congressional purpose. I would carry it out.

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[17] The petitioner and the majority suggest that if petitioner had not been an alien at the time of his trial he could have offered to plead guilty to one count of income tax evasion in return for a *nolle prosequi* on the remaining counts, thereby avoiding the possibility of being convicted for two crimes. This is unrealistic for two reasons. At the time of the trial, denaturalization proceedings were pending against petitioner. *United States* v. *Costello*, 145 F. Supp. 892, reversed, 247 F. 2d 384 (C. A. 2d Cir.), reversed, 356 U. S. 256. He was therefore aware of the deportation implications flowing from conviction on dual counts, and was in a position to bargain as he felt most advantageous to himself. And even more speculative than the question of what the petitioner might have done had conditions been different is whether the Government, with denaturalization proceedings pending against Frank Costello, would have agreed to a *nolle prosequi* which would foreclose the possibility of later deportation proceedings.

FD-263 (Rev. 5-1-59)

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Instant case is being placed in pending inactive status in view of COSTELLO's presumed influence in NYC rackets. His activities will be following and information reported six months hence.

INFORMANTS:

Identity of Source	Contacting Agent
[redacted]	SA [redacted]
JOSEPH VALACHI	SA [redacted]
	SA [redacted]
	SA [redacted]

b2, b7C, D

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NEW YORK

AT NEW YORK, NEW YORK. Will follow and report information concerning COSTELLO's activities six months from date of this report.

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FD-204 (Rev. 8-8-50)

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Copy to: 2-USA, SDNY

Report of: [redacted] b7C Office: New York, New York

Date: 3/10/64

Field Office File No.: 92-649 Bureau File No.: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis:

COSTELLO resides Apt. 18F, at 115 Central Park West, NYC. He does not have regular employment. Recent activities and contacts of subject set out. On 2/17/64, US Supreme Court ruled in COSTELLO's favor, viz., that he is not legally deportable.

-P*-

DETAILS:

A. PERSONAL HISTORY AND BACKGROUND

A. - Employment

[redacted] b2, b7C, D

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

b7C,D

[redacted] He leaves his residence late each morning and usually is observed to take a taxi downtown. His return to his home is likewise unconventional. He returns daily at varying hours in the late afternoon and early evening, frequently in the company of his wife.

B. Residence

[redacted]

b2, b7C, D

[redacted]

C. HANGOUTS AND ACTIVITIES

Systematic spot checks of the subject during the last five-month period has determined that he continues to visit very frequently such places as the Waldorf Astoria Hotel where he avails himself of the facilities of the barber shop, and he has been frequently observed to visit at the Pompeii Restaurant, Park Avenue at East 58th Street, New York City. He has been observed to dine at a number of the better restaurants in Midtown Manhattan, often with his wife.

D. STATUS IN DEPORTATION PROCEEDINGS

On February 17, 1964, a decision was handed down by the United States Supreme Court in the case of FRANK COSTELLO

versus Immigration and Naturalization Service. In this decision the Court reversed the judgment of the United States Court of Appeals for the Second Circuit, which had previously held that COSTELLO was subject to deportation.

This Court ruled that COSTELLO had been duly admitted to United States citizenship and that the offenses allegedly committed by him subsequently could not work a divestiture of his citizenship.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

MAR 10 1964

Title Frank Costello

Character Anti-Racketeering

Reference is made to New York report of Special Agent [redacted] dated and captioned as above.

b7c

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

NY 92-649

New York, New York

MAR 10 1964

Frank Costello
Anti-Racketeering

b7C

Reference is made to the report of Special Agent [redacted] dated and captioned as above.

Set out below are characterizations of informants utilized in referenced report.

[redacted]

b2
b7D

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-36 (Rev. 12-13-56)

FBI

Date: 6/5/64

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL (Priority or Method of Mailing)

b7c

TO : DIRECTOR, FBI (92-2869)

FROM: SAC, NEW YORK (92-649)

FRANK COSTELLO aka
AR

ReNYtel, 6/3/64.

b7c

COSTELLO arrested on vagrancy charge by NYCPD 6/3/64, and this charge was dismissed in Criminal Court, same date. Charges against COSTELLO's associates [redacted] also dismissed. Others were arraigned before USC, SDNY, on tax stamp violation. [redacted] COSTELLO under subpoena to furnish testimony before FGJ in this matter 6/5/64.

3 - Bureau
1 - New York

b7c

[redacted] b7c

92-2869-101

b7c

REC-133

JUN 8 1964

b7c

[redacted]

74 JUN 11 1964

Special Agent in Charge

Sent _____ M Per _____

SPECIAL INVESTIGATIVE DIVISION

6-4-64 67C

Costello and others named arrested in Dinty Moore's Restaurant, New York, afternoon June 3, 1964, by New York Police Department. Internal Revenue Service and New York Police Department had gone to restaurant to arrest [redacted] and observed him in company of Costello and others and all taken into custody. Arrest of Costello possibly made as accommodation to Internal Revenue Service to give time for Federal Government to issue subpoena for Costello to appear before Grand Jury, Southern District of New York, to be questioned concerning gambling connections.

[redacted] 67C

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

JUN 3 1964

TELETYPE

[redacted] 67C

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. DeLoach
Mr. Evans
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

CODED TELETYPE

FBI NEW YORK

6-16 PM EDT URGENT 6-3-64 [redacted] 67C

TO DIRECTOR, FBI /8/

FROM NEW YORK /1P

also known as Anti-racketeering
FRANK COSTELLO AKA AR

NEW YORK CITY Police Department

FOLLOWING INDIVIDUALS ARRESTED THIS DATE BY NYCPD FOR CONSORTING.

FRANK COSTELLO., [redacted]

67C

[redacted]

NEW YORK OFFICE
ALL RELEASED EXCEPT COSTELLO WHO IS BOOKED FOR VAGRANCY. NYO
WILL OBTAIN DETAILS.

[redacted] 67C

END

2- LLD

FBI WASH DC

REC-11 92-2869-102

6 JUN 8 1964

FBI

53 JUN 15 1964

FD-2[illegible] (R[illegible]

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	10/28/64	3/1 - 10/20/64

TITLE OF CASE: FRANK COSTELLO, aka [redacted] b7c

REPORT MADE BY: [redacted] TYPED BY

CHARACTER OF CASE: AR b7c

REFERENCE: Report of SA [redacted] 3/10/64, at NY.

- P* -

ENCLOSURES (2)

TO BUREAU

Original and one copy of letterhead memorandum characterizing the informants utilized in instant report.

ADMINISTRATIVE: b7c

Two copies of this report are designated for the USA, SDNY, per his request.

This report beings the investigation of subject, erstwhile crime overlord, up to date and therefore will be returned to a pending inactive status. In view of COSTELLO's peculiar status of alleged elder statesman of the rackets in

APPROVED [redacted] b7c SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

(3) - Bureau (92-2869) (~~Encls. 2~~)

2 - USA, SDNY

3 - New York (92-649)

92-2869-103

REC-39

17 OCT 20 1964

62-10[illegible]

DISSEMINATION RECORD OF ATTACHED REPORT

AGENCY

REQUEST RECD.

DATE FWD.

HOW FWD.

BY

Copy fu[illegible]

NOTATIONS [redacted]

58 DEC 9 1964

U.S. GOVERNMENT PRINTING OFFICE 16—75324-1

b7c

ADMINISTRATIVE (CONT'D):

this country. A report will again be submitted approximately six months hence.

INFORMANTS:

Identity of Source	Contacting Agent
[redacted]	SA [redacted]
	SA [redacted]
	SA [redacted]
	SA [redacted]
	SA [redacted]

b2; b2; b7C

LEAD:

NEW YORK

At New York, New York

Will follow through informant coverage the activities of COSTELLO and report same to Bureau by appropriate communication and by a report six months hence.

(3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2- USA, SDNY

Report of: [redacted] b7C
Date: 10/28/64

Office: New York, New York

Field Office File #: New York 92-649

Bureau File #: 92-2869

Title:

FRANK COSTELLO

Character:

ANTI-RACKETEERING

Synopsis:

Subject and wife continue to reside in Apt. 18F at 115 Central Park West, NYC, and to maintain summer residence at 5 Barkers Point Road in fashionable Sands Point, Long Island. COSTELLO picked up by local police on 6/3/64, on vagrancy charge; later dismissed. Contacts of subject currently set out as well as his possible affiliations in gambling and bookmaking.

- P* -

DETAILS:

A - BACKGROUND INFORMATION

1- Residence

[redacted] advised Special Agent [redacted] that COSTELLO and his wife continue to reside here in Apartment 18F. [redacted] informed Special Agent [redacted] that the COSTELLOs maintain a home at 5 Barkers Point Road in Sands Point, a fashionable Long Island community. They spend long weekends and vacation periods at Sands Point where the subject preoccupies himself gardening and entertaining old friends, [redacted] b7C

b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

2- Employment

[redacted]

b7, b7C, D

B - ASSOCIATES AND ACTIVITIES

[redacted]

The New York "Telegram and Sun", issue of June 5, 1964, disclosed that on that date COSTELLO was arrested while dining at Dinty Moore's Restaurant, New York City. His companion at lunch on that occasion was JEREMIAH "JERRY" KELLEY, a local gambler of considerable stature who was taken into custody by Internal Revenue agents and charged with accepting bets without having purchased the required Federal wagering tax stamp. COSTELLO was booked as a vagrant, but was released after a three hour detention by local police when his attorney HAROLD FRANKEL successfully moved for

dismissal of the charge against COSTELLO in criminal court. Two other bookmakers, well-known to local authorities, were arrested on the same date. They are BENJAMIN ROTHSTEIN and SAMUEL FEINBERG, characterized by the press as bookies "for the Broadway crowd". They, together with KELLEY, appeared before United States Commissioner HABLE N. BISHOPP on June 3, 1964, and were admitted to bond.

b7C

[redacted]

b2; b7C, D

Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York
October 28, 1964

Title Frank Costello

Character Anti-Racketeering

Reference is made to report of Special Agent [redacted] dated and captioned as above.

b7c

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

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4-750 (Rev. 12-14-88)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

2 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☑ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s): _____

_____

☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
92-2869-103 (last two pages)

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXXXXX

FBI/DOJ

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-107

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 5/13/65

b7c

FROM : SAC, NEW YORK (92-649) (P4)

SUBJECT: FRANK COSTELLO, aka
AR

(OO - NEW YORK)

b7c

In order to aid in a current appraisal of subject's business activities the Bureau is requested to furnish as expeditiously as possible the Federal Income Tax Returns of COSTELLO for the past three year period.

Copies of Federal income tax returns were requested on 5-14-65 and will be forwarded to you upon receipt from IRS.

2 - Bureau (92-2869)
1 - New York (92-649)

b7c

b7c

b7c

EXP. PROC.

REC-31 92-2869-104

2 MAY 20 1965

b7c

EX-116

b7c

58 MAY 26 1965

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FD-263 (Rev 5-1-59)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	JUN 28 1965	11/20/64-6/10/65

TITLE OF CASE

FRANK COSTELLO aka

[redacted] b7c

REPORT MADE BY [redacted] TYPED

CHARACTER OF CASE

AR

b7c

b7c

REFERENCE:

Report of SA [redacted] NY, 10/28/64.
NYlet to Bureau, 5/13/65.

-P-

ENCLOSURES

TO BUREAU

Two (2), original and copy of LHM characterizing the informants utilized in this report.

ADMINISTRATIVE

b7c [redacted]

By letter dated 5/13/65, the NYO requested Bureau procurement of Federal Income Tax returns for COSTELLO for the

APPROVED [redacted] SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

3 - Bureau (92-2869) (Encl 2)
2 - USA, SDNY
3 - New York (92-649)

92-2869-105

16 JUL 1 1965

1 - dd 1539

DISSEMINATION RECORD OF ATTACHED REPORT

AGENCY	1 CC. AAG, Criminal Division			
REQUEST RECD.	Organized Crime and Racketeering			
DATE FWD.	Section, Room 2524			
HOW FWD.				
BY				

NOTATIONS

[redacted] b7c

51 JUL 27 1965

U.S. GOVERNMENT PRINTING OFFICE 16—76824-1

past three years for evaluation.

[redacted]

By referenced report this investigation was placed P* for six month period subject, however, to development meanwhile of significant information.

INFORMANTS

Identity	Contacted By
[redacted]	SA [redacted]
	SA [redacted]
	SA [redacted]
	SA [redacted]
	SA [redacted]

NEW YORK

AT NEW YORK, NEW YORK

1. Will secure for analysis recent Income Tax

LEADS (Continued)

AT NEW YORK, NEW YORK

Returns for subject. Request to Bureau for same has been made.

[redacted]

b7C

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

b7C

Report of: [redacted] Office: New York, New York

Date: JUN 28 1965

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: COSTELLO continues to reside with his wife in their luxury apartment 18 F at 115 Central Park West, NYC, and maintains a summer home at 5 Barkers Point Rd., Sands Point, Long Island. Contacts and activities cited.

-P-

DETAILS:

A. BACKGROUND INFORMATION

1. Residence

[redacted] advised SA [redacted] at various times during the past six month period that COSTELLO continues to reside with his wife in the luxury apartment 18 F at this address.

b7C, D

[redacted] said that COSTELLO also continues to maintain his summer home in Sands Point, Nassau County, Long Island, where he spends much of his leisure time.

2. Employment

Systematic surveillances of the subject, established over the six month period past, have demonstrated that COSTELLO has no gainful employment such as would necessitate his physical presence in any place at a particular time.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted]

COSTELLO has been found to gravitate to more sophisticated restaurants and hotels in Manhattan and some of these in which he has been observed by Special Agents are:

The Waldorf Astoria and Biltmore Hotels; Pompeii and Les Champs Restaurants; Copacabana and Stork Nightclubs. His behavior while exposed in these places is always circumspect and deferential.

B. ASSOCIATES - ACTIVITIES

On November 20, 1964, COSTELLO was observed with JOSEPH LANZA by SA [redacted] They met in the Waldorf Astoria Hotel and later walked to the Les Champs Restaurant, 25 East 40th Street, New York City, where they dined leisurely. Following lunch COSTELLO made a regular visit to the Biltmore Hotel where he frequently receives his massage.

[redacted]

[redacted]

b2, b7C, D

N.Y.

[redacted]

L

The March 24, 1965 issue of the New York "Times" records that JEREMIAH KELLEY, "the millionaires' bookmaker and friend of FRANK COSTELLO" was indicted by a Federal Grand Jury on charges of soliciting bets across the country. KELLEY, according to this story, was a companion of COSTELLO when, on June 3, 1964, they were picked up by the New York City Police Department on local charges. [redacted]

b7C

In May, 1965, JOSEPH VALACHI said that he knew of no particular relationship between COSTELLO and [redacted] one of "the biggest bums in the La Cosa Nostra", a [redacted] whom COSTELLO would not be apt to have any business with. [redacted]

N.Y.

b7C

b2, b7D

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

June 28, 1965

In Reply, Please Refer to File No.

Bureau 92-2869
New York 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent John [redacted] dated and captioned as above.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

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UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York
June 28, 1965

In Reply, Please Refer to File No.

Bureau 92-2869
New York 92-649

Re: Frank Costello
Anti-Racketeering

b7C

Set forth below are characterizations of informants utilized in the report of Special Agent [redacted] dated and captioned as above:

[redacted]

b2;
b7C;
D

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OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-107

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 7/22/65

FROM : [redacted] b7C
SAC, New York (92-649)

SUBJECT: FRANK COSTELLO, aka
AR

(OO - New York)

[redacted] b7C

The Bureau is requested to arrange for the procurement of subject's Federal Income Tax Returns for the past three year period. NYO desires to analyze these and to identify the person preparing them and to conduct such investigation as may be suggested by them.

It is to be noted that COSTELLO continues to reside at 115 Central Park West, Manhattan. He does not have any known regular employment requiring a day-to-day time committment.

2 - Bureau (92-2869)
1 - New York (92-649)

[redacted] b7C
(3)

b7C [redacted]

ST-116

Copies of Federal income tax returns were requested on 5-19-65 and will be forwarded to you upon receipt from IRS. re NY ltr 5-13-65

REC-73 92-2869-106

5 JUL 23 1965

b7C [redacted]



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

SAC, New York (92-649) 8/12/65

Director, FBI (92-2869)

FRANK COSTELLO, aka
ANTI-RACKETEERING

[redacted] b7C

Reference is made to your letters dated 8/13/65 and 7/22/65.

Enclosed herewith is one copy each of the Federal income tax returns filed by Frank and Loretta B. Costello, 115 Central Park West, New York, New York, for 1961 through 1963.

These returns should be reviewed by your office for any possible leads relative to your investigation. If any additional or unreported income comes to your attention, the Internal Revenue Service should be so advised.

The Internal Revenue Service has furnished these returns on a strictly confidential basis. If any information concerning these returns is incorporated into a report or any other Bureau communication at any time, the source must be protected.

Enc. (2)

NOTE:

1961	Adjusted Gross Income	$16,755.59
	Occupation - Not Given Oil Leaseholds Net Income from Wagers Sale of Property	$12,450.00
1962	Adjusted Gross Income	$21,135.43
	Income from Wagers	$20,725.00
1963	Adjusted Gross Income	$30,610.52
	Income from Wagers	$29,700.00

MAILED 30
AUG 12 1965
COMM-FBI

EX-100 REC. 37 92-2869-107

Social Security Number 092-22-3576

[redacted] b7C

19 AUG 13 1965

Tolson
Belmont
Mohr
DeLoach
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

50(A) 350 AUG 17 1965

MAIL ROOM TELETYPE UNIT

FD-263 (Rev. 5-1-59)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	10/21/65	7/6/65 - 10/6/65

TITLE OF CASE

FRANK COSTELLO aka

[redacted] b7c

REPORT MADE BY [redacted] TYP

CHARACTER OF CASE

b7c

AR

REFERENCES: b7c

Report of SA [redacted] 6/28/65, at NY.
New York letter to the Bureau, 7/22/65.
Bureau letter to NY, 8/12/65.
New York letter to Dallas, 9/27/65 (IO).
Washington Field letter to NY, 9/21/65 (IO).

- P -

ENCLOSURES

TO BUREAU (2) b7c [redacted]

Original and one copy of letterhead memorandum characterizing informants utilized in this report.

b7c

[redacted] (Case More than one year old)

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: 1 d+c

(3) Bureau (92-2869) (Encl. 2)
2-USA, SDNY
3-New York (92-649)

DO NOT WRITE IN SPACES BELOW

92-2869-108 REC

EX 110

10 OCT 25 1965

Dissemination Record of Attached Report				
Agency				
Request Recd.	[redacted]	CC, AAG, Criminal Division		
Date Fwd.		Organized Crime and Racketeering		
How Fwd.		Section, Room 2524		
By				

55 NOV 4 1965

Notations

b7c [redacted]

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2-USA, SDNY

b7C

Report of: [redacted] Office: New York, New York

Date: October 21, 1965

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: COSTELLO resides in Apartment 18F, 115 Central Park West, NYC, and seasonally at his summer home at 5 Barkers Point Road, Sands Point, LI. He has no pattern of activity suggesting he is regularly employed. Contacts and activities of relatively recent date set out.

- P -

DETAILS:

A. BACKGROUND INFORMATION

1. Residence

b7C, D

[redacted] advised SA [redacted] COSTELLO, as previously reported, continues to occupy Apartment 18F at this address with his wife. [redacted]

b7C, D

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ADMINISTRATIVE

This investigation has received requisite investigative attention, particularly with surveillance and informant coverage, since it was last reported upon.

b2
b7C

[redacted]

The following data was obtained from Federal Income Tax returns filed on behalf of COSTELLO by his accountant, MORRIS KOBY, 160-16 Jamaica Avenue, Queens, NY. These returns were for the years 1961, 1962 and 1963. They were joint returns signed by FRANK and by LORETTA B. COSTELLO.

1961 (executed 7/16/62) (no occupation stated)
(Social Security #092-22-3576

Income

Dividends, Interest, Rents, Royalties	$13,172.58
(a) Dividends on Admiral Radio Stock (net) $150.00	
(b) Oil leaseholds $572.58	
(c) Net income from wagers $12,450.00	
Capital Gain-sale of oil leasehold	$ 3,583.01
Total Income	$16,755.

Credits

Itemized Deductions	$ 6,292.18
(a) Mortgage interest at 115 Central Park South $688.37	
(b) Realty taxes $5303.81	
(c) Other taxes $100.00	
(d) Expense of preparing Income Tax Return $200.00	

COVER PAGE

COSTELLO took three $600.00 deductions for himself (2) and his wife (1). This tax was $1846.48; for failure to make quarterly payments as they became due, he was assessed a penalty amounting to $51.71.

It is stipulated that COSTELLO acquired an interest in 1949 in a certain oil/gas lease:

R.L. MORRIS "A" lease for property in Rice County, Kansas, which was acquired from Kingwood Oil Company, Oklahoma City, Oklahoma. Cost: $11,096.09

On 4/20/51, he acquired an interest in the following property:

CRAMM and BATCHMAN leases for property in Barton and in Rice Counties, Kansas, which was acquired from Rean Oil Company, no address given. Cost: $76,757.27

On 11/28/61, this property was sold by authority of the Internal Revenue Service, Wichita, Kansas District, to Mr. A.M. JONES, Jones Drilling Company, Great Bend, Kansas, and netted to COSTELLO $7166.02.

1962 (executed 4/1/63) (no occupation stated)

Income

Rents, royalties			$21,135.43
(a) royalties	$ 410.43		
(b) Net income from wakers	$20,725.00		

Credits

i.e. Deductions		$ 3,872.86
(a) miscellaneous charities	$ 500.00	
(b) interest expense i.e. 115 Central Park West Corp. ($682.92) and Internal Revenue Service ($27.70)	$ 710.62	

COVER PAGE

NY 92-649

ADMINISTRATIVE CONT'D

(c) Taxes: realty	$1126.64	
State/Local	$ 225.00	
State Income	$ 60.60	
Other	$ 100.00	$1,812.24
(d) Medical		$ 850.00
(e) preparation of tax returns		$ 500.00

1963 (executed 3/21/64) (no occupation stated)

Income

Rents, royalties		$30,610.52
(a) oil leasehold royalties	$ 910.52	
(b) net income from wagers	$29,700.00	

Credits

i.e. Deductions		686.65	$ 5,097.22
(a) interest expense		$ 686.65	
(b) taxes: realty	$3785.57		
State/Local	250.00		
State Income	—		
Others	125.00	$4,160.57	
(c) Medical	None		
(d) preparation of tax returns	250.00		

Federal Income Tax Paid for 1961	$1,846.48
Federal Income Tax Paid for 1962	$3,758.77
Federal Income Tax Paid for 1963	$6,691.05

Returns for these three years were prepared by MORRIS KOBY, 160-16 Jamaica Avenue, Jamaica, NY.

NY 92-649

INFORMANTS

Identity of Source	Contacted By
[redacted] b2, b7C, D	SA [redacted] b7C
NY T-2 Internal Revenue Service Washington, D.C.	Washington Field Offic
[redacted] b2 JOSEPH VALACHI	Washington Field Offic
[redacted] b2, b7E	SA [redacted] b7C

LEADS

NEW YORK

b7D [redacted]

b7C, D [redacted]

COVER PAGE

b7c

2. Employment

COSTELLO has been frequently observed by SA [redacted] as he leaves his residence, generally late in the morning of secular days. He has no business commitments that require him to be in evidence at any particular location. He moves about mid-Manhattan leisurely, contacting people in the better restaur in that section of the city.

[redacted]

b2, b7c, D

NY T-2 advised in September, 1965, that COSTELLO has certain interests in the petroleum industry in the State of Oklahoma.

b7c

[redacted] in September, 1965, related that "almost everyone knows that COSTELLO has a financial interest in House of Lords Scotch, and also the Remsey Scotch".

B. ASSOCIATES

[redacted]

b2, b7c, D

b2, b7C, D [redacted] N.Y.

As previously reported, the above persons have known racket connections locally and nationally.

C. MISCELLANEOUS

In September, 1965, [redacted] b2 provided the following summary of information regarding the subject:

COSTELLO, who was known as FRANK SAVERRIA, came from the East Harlem Section of Manhattan. In the early 1930's, COSTELLO was very much involved in the operation of slot machines and also had enough influence with the authorities that his machines were protected. During this period, COSTELLO was tied in with the late HUEY LONG's interests in gambling and in night clubs in New Orleans. "Dandy Phil" KASTEL operated for LONG-COSTELLO.

In the mid-30's, COSTELLO's associates, "Lucky" LUCIANO and VITO GENOVESE, got into trouble locally; LUCIANO was jailed, while GENOVESE "ran to Italy". The mob designated COSTELLO "acting boss" for LUCIANO. This was a development GENOVESE did not like, and, with the help of TONY BENDER, GENOVESE set about to unseat COSTELLO. He tried to discredit COSTELLO with the mob brass by showing that WILLIE MORETTI, COSTELLO's right-hand man, was unreliable. GENOVESE tried to get approval of BENDER and MIKE MIRANDA to kill COSTELLO and the attempt to kill COSTELLO [redacted] b7C and TOMMY RYAN was inspired by GENOVESE. GENOVESE finally engineered his way to control of the "family" headed by LUCIANO, who was now deported and living abroad, and issued orders that anyone in his "family" caught talking with COSTELLO would be in trouble. Subsequently, GENOVESE and COSTELLO buried their differences in jail in Atlanta, COSTELLO

life was spared and when he left prison, he was put under the wing of [redacted] in GENOVESE's group.

[redacted] was not close to COSTELLO because of his affiliat with people like TONY BENDER. [redacted] liked and admired COSTELLO, regarding COSTELLO as a gentleman "with class". COSTELLO was allegedly the owner of apartment houses, including the apartment on Central Park West, where he lived. He was also very close to the late WILLIAM O'DWYER, former Mayor of New York City. [redacted] had little admiration for GENOVESE or BENDER.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

October 21, 1965

In Reply, Please Refer to
File No. Bureau 92-2869
New York 92-649

Title Frank Costello

b7c

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above, at New York.

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

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UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York
October 21, 1965

Frank Costello
Anti-Racketeering

b7C

Reference is made to the report of Special Agent [redacted] dated and captioned as above.

The following are the characterizations of the informants utilized in that report:

b2
b7D [redacted]

b7D [redacted] is another Federal agency which is in a position to provide personal data concerning the subject.

b2 [redacted] is an individual who has a criminal record and is acquainted with numerous New York hoodlums.

b2
b7D [redacted]

b7D [redacted]

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92-7869-108

FD-263 (Rev. 5-1-59)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	MAR 28 1966	10/25/65-3/23/66

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPED [redacted]

CHARACTER OF CASE

b7C

AR

REFERENCES: b7C

Report of SA [redacted] NY, 10/21/65.
Dallaslet to NY, 11/30/65 (IO).
Dallaslet to NY, 1/27/66 (IO).

-P*-

ENCLOSURES

TO BUREAU

Enclosed for the Bureau are two (2), original and one copy, of LHM characterizing the informants utilized in this report.

b7C [redacted]

CASE PENDING OVER ONE YR. YES PROSECUTION PENDING OVER 6 MOS. NO

APPROVED [redacted] b7C SPECIAL AGENT IN CHARGE

COPIES MADE:

3 - Bureau (92-2869) ([redacted])
2 - USA, SDNY
3 - New York (92-649)

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92-2869-109

[redacted]

EX 109

4 MAR 30 1966

[redacted]

Dissemination Record of Attached Report			
Agency			
Request Recd.	1	CC. AAG, Criminal Division,	
Date Fwd.		Organized Crime and Racketeering	
How Fwd.		Section, Room 2524	
By			

Notations

[redacted] b7C

ADMINISTRATIVE

This investigation has received sustained attention during the interval since October, 1965. Informants in a position to know have not become aware of any patent connection of this subject with any racket maneuverings in New York City or elsewhere. Systematic surveillances of COSTELLO have not revealed any unusual activity or contacts. Information developed which concerns individuals in the higher councils of LCN has had no application to COSTELLO except as hereinafter noted.

[redacted] b7C, D

Surveillances of COSTELLO during the past several months have been participated in by SAS [redacted] and the writer. b7C

This investigation is being placed in a Pending Inactive status at this time and an up-to-date report will be submitted to the Bureau six months hence. Any significant developments will, of course, be promptly directed to the attention of the Bureau.

INFORMANTS

Identity of Source	Contacting Agent
[redacted]	b7C, D, E

NY 92-649

LEAD

NEW YORK

AT NEW YORK, NEW YORK. Will submit investigative report six months hence bringing activities of subject and his known contacts up to date as they are ascertained through informants and through observation of him in his known NYC haunts.

[redacted]

-C*-
COVER PAGE

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY b7c

Report of: [redacted] Office: New York, New York
Date: MAR 28 1966

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: Subject, upon contact 3/22/66, advised that he would not submit to interview by FBI on specific instruction from his attorney EDWARD BENNETT WILLIAMS.

-P*-

DETAILS:

A. PERSONAL HISTORY - BACKGROUND

1. Residence

On numerous occasions in the past several months and again on March 22, 1966, COSTELLO was observed leaving the apartment building at 115 Central Park West, New York City (NYC). b7c [redacted] advised Special Agent (SA) [redacted] that COSTELLO and his wife continue to reside at this address in Apartment 18-F.

2. Employment

Observation of the subject in recent months indicates that he has no gainful employment which makes specific demands upo his time. On March 22, 1966, he stated to SA [redacted] that "I am just taking it easy and have been for a long time". b7c

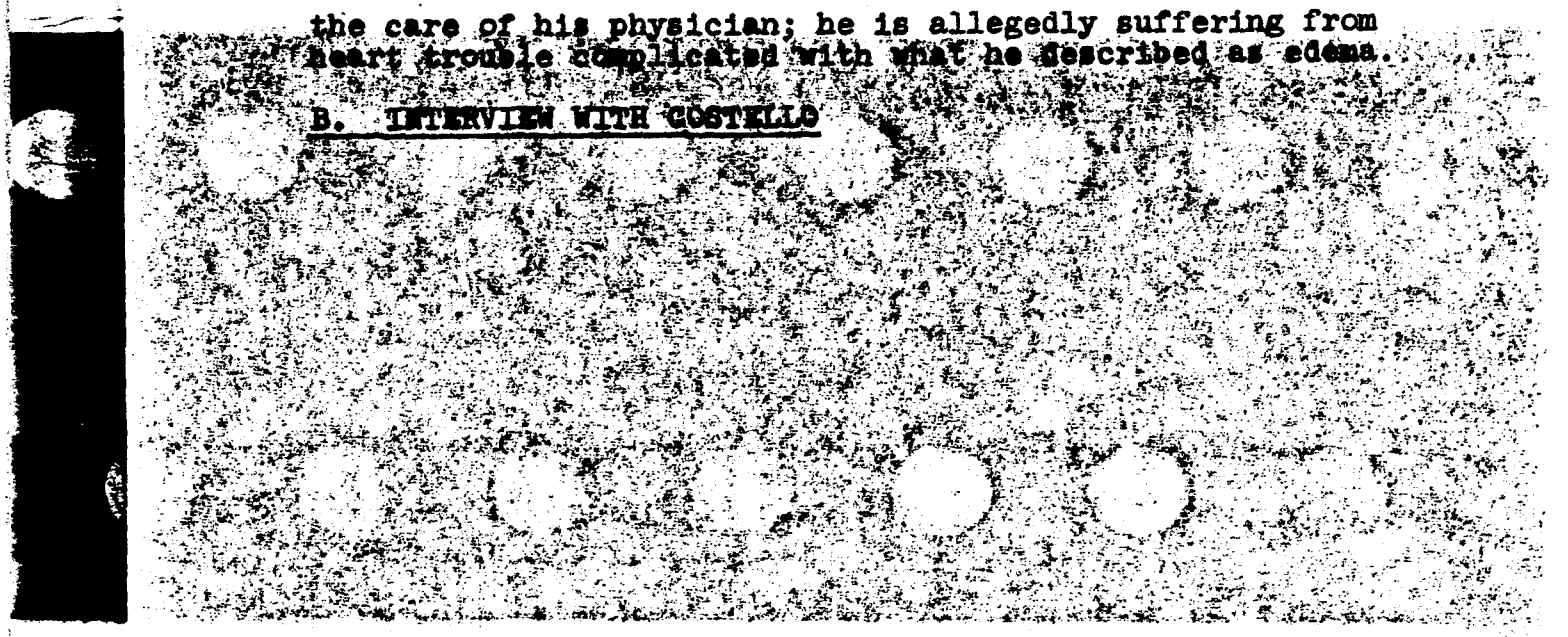
3. Status of Health

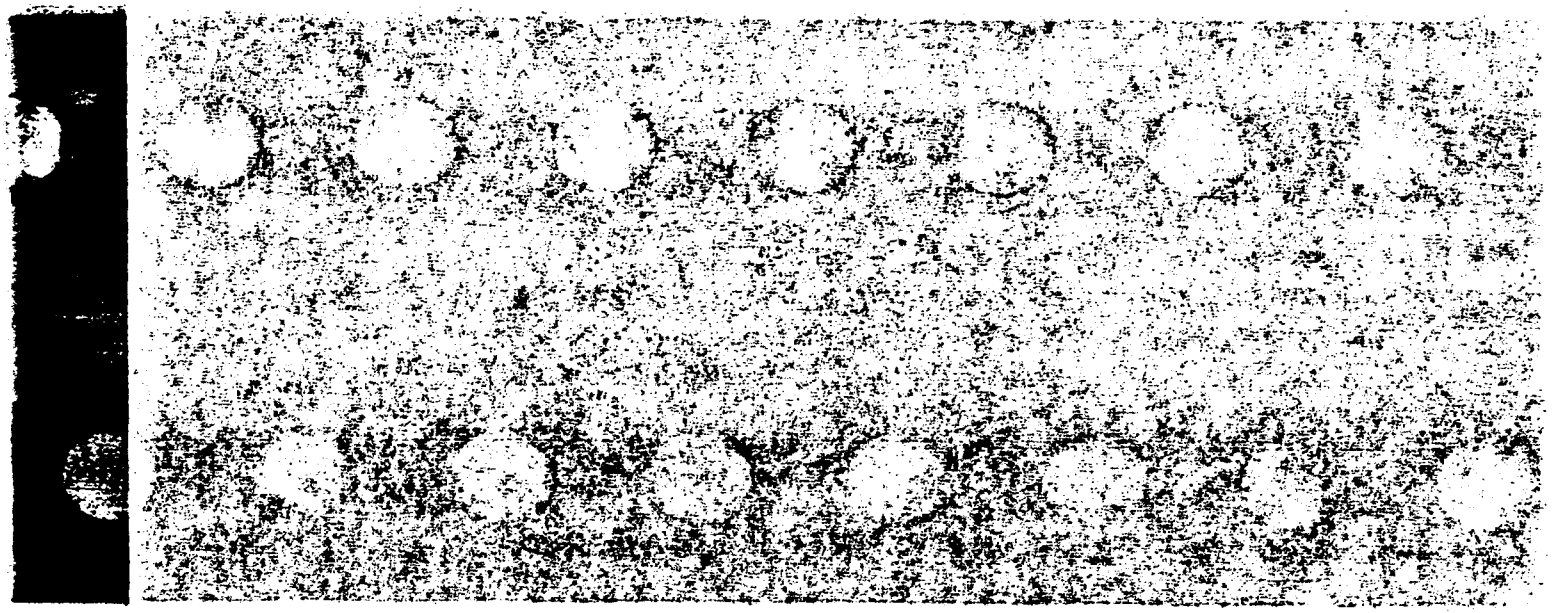
COSTELLO complained on March 22, 1966, of being under

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the care of his physician; he is allegedly suffering from heart trouble complicated with what he described as edema.

B. INTERVIEW WITH COSTELLO





FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 3/22/66

b7C

[redacted] immediately upon being approached for interview that, on instructions from his attorney EDWARD S. WILLIAMS he had nothing to say to the FBI such he be requested that any conversation with the FBI would have to have specific clearance from Mr. WILLIAMS.

After exchanging of pleasantries the interview was concluded.

On 3/22/66 at Waldorf Astoria Hotel Lobby - New York, N.Y. File # NY 92-649

by SAs [redacted] b7C Date dictated 3/22/66

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4-750 (Rev. 12-14-88)

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92-2869-109 pages 4 through 7

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FBI/DOJ

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Bu 92-2869
NY 92-649

New York, New York

MAR 28 1966

Title Frank Costello

Character Anti-Racketeering

Reference is made to report of Special Agent [redacted] dated and captioned as above at New York.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York

MAR 28 1966

Bu 92-2869
NY 92-649

Frank Costello
Anti-Racketeering

b7C

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York.

The following are the characterizations of the informants utilized in that report.

b2;
b7C,
D

[redacted]

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OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 4/1/66

FROM : SAC, NEW YORK (92-649)

SUBJECT: FRANK COSTELLO, aka
AR
b7C

ReBuairtel 1/31/66 captioned Criminal Intelligence Program requesting specific data for ADP purposes concerning subject and not available in Bufiles.

The data requested is as follows:

"FAMILY" OF RELATIVES	NONE KNOWN
ILLEGAL ACTIVITY	GAMBLER
AREAS OF ACTIVITY	NEW ORLEANS, LAS VEGAS

(3) - Bureau (92-2869)
1 - New York (92-649)

b7C

(4)

b7C

EX 109
REC-18 92-2869-110

9 APR 5 1966

b7C

b7C

APR 1

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] b7C Office: New York, New York

Date: NOV 25 1966

Field Office File #: 92-649 Bureau File #: 92-2869

Title:
FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: Subject and wife own and reside in Apartment 18-F, 115 Central Park West, NYC, and maintain summer residence in Sands Point, Long Island, NY. COSTELLO does not have regular employment. [redacted] b7D Informants have no information indicating COSTELLO's present involvement in any local LCN activities.

- P* -

DETAILS:

A. PERSONAL HISTORY - BACKGROUND

1. Residence and Employment

During November, 1966, and during prior months, COSTELLO was observed by Special Agents of the New York Office to enter and leave the apartment building at 115 Central Park West where he has long resided. [redacted] COSTELLO owns his apartment number 18-F and he also owns a summer home in Sands Point, Long Island. b7C

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FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
New York, New York
OCT 19 1971

In Reply, Please Refer to
File No. Bufile 92-2869
NYfile 92-649

Title Frank Costello

b7c

Character Anti-Racketeering

Reference [redacted] is made to report of Special Agent [redacted] dated and captioned as above at New York.

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

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OPTIONAL FORM NO. 10
5010-104-01

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-2869) DATE: 4/28/72

b7c

FROM: [redacted] SAC, NEW YORK (92-6481) (P)

SUBJECT: FRANK COSTELLO aka
AR

Re report of SA [redacted] 10/19/71, at New York.

[redacted]

b2
b7c
b7D

[redacted]

REC-104 92-2869-120

A number of spot checks have been conducted of COSTELLO since referenced report and nothing pertinent was noted

In view of subject's lack of activity in the affairs of LCN or other criminal activity and due to subject's advanced age this matter will be continued in a P* status for another 6 month

[redacted]

2 - BUREAU
- NEW YORK

b7c

57 MAY 8 1972 10c

MAY 2 1972

b7c [redacted]

FD-263 (Rev. 1-7-72)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	10/16/72	4/25/72 - 10/10/72

TITLE OF CASE: FRANK COSTELLO aka

REPORT MADE BY: [redacted] TYPED BY:

CHARACTER OF CASE: AR - b7c

REFERENCES:

[redacted] NYrep of SA [redacted] 10/19/71.
NYlet, dated 4/28/72.

b7c - C - b7c

ADMINISTRATIVE

The period of this report is extensive as this case had previously been carried in a pending inactive status. Due to the advanced age of the subject and his apparent lack of activity in criminal matters, this is being placed in a closed status, subject to reopening if information of a criminal nature is received concerning him.

b7c [redacted]

ACCOMPLISHMENTS CLAIMED	NONE	ACQUIT-TALS	CASE HAS BEEN
CONVIC. / PLEAS / FINES / SAVINGS / RECOVERIES			PENDING OVER ONE YEAR [X] YES [ ] NO PENDING PROSECUTION OVER SIX MONTHS [ ] YES [X] NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

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92-2869-121 REC-2A

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(1 - 92-658 Sub A)

OCT 18 1972

[redacted] b7c

Dissemination Record of Attached Report

Agency			
Request Recd.			
Date Fwd.			
How Fwd.	6 0 SEC 92 1082		10-20-72
By			

Notations: [redacted] b7c

CC, AAG, Criminal Division, Organized Crime & Racketeering Section, Room [redacted]

F474

- A -
COVER PAGE

INFORMANTS

Identity of Source	Contacted By
[redacted]	SA [redacted]
	SA [redacted]

b2, b7D b7C

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, SDNY
1 - Strike Force, SDNY

Report of: [redacted] Office: New York, New York

Date: 10/16/72 b7c

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: COSTELLO advised he resides at 115 Central Park West, New York City, from Tuesday to Friday and goes out to his home on Long Island from Friday to Tuesday. COSTELLO admitted that he knew TOMMY RYAN, but denied any knowledge of the murder of RYAN.

- C E

DETAILS:

Residence

FRANK COSTELLO advised that he resides at 115 Central Park West, New York City, from Tuesday to Friday and goes out to his home on Long Island from Friday to Tuesday.

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FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 7/20/72

FRANK COSTELLO advised that he is now and old man an has nothing to do with the rackets or racket connected guys.

He said that he spent the weekend at his home at Sands Point, Long Island, and just came into New York City today. This is his usual routine, staying in his New York City apartment at 115 Central Park West, from Tuesday to Friday and going out to Long Island on Friday and returning again on Tuesday.

He stated he has been out of jail 11 years now, following his conviction on a tax case and he did not know THOMAS EBOLI, who was also known as Tommy Ryan before he went to jail. When he came out of jail, Ryan was there, "and grew like a mushroom." He met him on two occasions, both times in restaurants and the last time was about six years ago.

He was asked if TOMMY RYAN was the "back-up" man when "Chin" GIGANTE shot him. COSTELLO advised that GIGANTE was acquitted of this charge and that he never heard that TOMMY RYAN had anything to do with the shooting.

He said that he has been away from people with a bad reputation for many years and he was asked if he had not met with CARLO GAMBINO in the Waldorf Astoria about one year ago. He admitted that he forgot about this but he accidentally met GAMBINO in the Waldorf Astoria and invited him to have lunch which they did. He said that he knew GAMBINO from 35 years ago when they were both "rum runners" during prohibition.

At this time, CHARLES TOURINE walked into the lobby and was introduced to Special Agent (SA) [redacted] and they started a conversation. b7C

COSTELLO then stated to SA [redacted] that he has been a close friend of CHARLIE's for many years and has stopped over to see him several times now that CHARLIE had gotten out of jail.

COSTELLO advised that he does not know anything concerning the murder of EBOLI and does not expect to hear anything.

On 7/18/72 at New York, New York File # NY 92-649 NY 92-1569

by SAS [redacted] Date dictated 7/20/72

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He did state that should he hear anything of value he will advise the agent.

62,670

Associates

[redacted] COSTELLO is doing nothing these days but relaxing. He still lives at Central Park West and also has a weekend home in Nassau County. During the week he spends his time in the apartment at Central Park West and in good weather goes down to the Waldorf Astoria Hotel.

4-750 (Rev. 12-14-88)

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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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92-2869-121 pg. 5

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X NO DUPLICATION FEE X
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FBI/DOJ

b2, b7C, D

Miscellaneous

[redacted]

Spot checks have been conducted of subject during the period of this report and nothing pertinent was noted.

[redacted]

COSTELLO has no regular employment obligation which makes regular day-to-day demands upon his time. Observation of him in recent weeks indicates, as heretofore, that he is in a state of retirement and moves about Manhattan uncommittedly, frequenting the many prestigious eating places in New York City.

[redacted]

b2, b7C, D

B. ASSOCIATES

[redacted]

4-750 (Rev. 12-14-88)

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☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
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_____	☑ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
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92-2869-111 page 3

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FBI/DOJ

[redacted]

b2, b7C, D

Between April and November, 1966, COSTELLO has been observed at varying times by Special Agents of the New York Office and on these occasions, he has made no unusual contacts.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

NOV 25 1966

In Reply, Please Refer to
File No. Bureau 92-2869
New York 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
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92-2869-111 (LAST 2 PAGES)

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FBI/DOJ

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	AUG 21 1967	1/15/67 - 8/10/67

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPED

CHARACTER OF CASE

AR

b7C

REFERENCE: b7C

Report of SA [redacted] New York, 11/25/66.

- P -

ENCLOSURES: b7C

TO BUREAU (2)

Original and one copy of LHM characterizing the informants used in this report.

[redacted]

ACCOMPLISHMENTS CLAIMED: None						ACQUITTALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR [X] YES [ ] NO
		[redacted]		b7C			PENDING PROSECUTION OVER SIX MONTHS [ ] YES [X] NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

3-Bureau (92-2869) (Encl. 2)
2-USA, SDNY
3-New York (92-649)

92-2869-112

REC 5

22 AUG 25 1967

EX-102

[redacted]

Dissemination Record of Attached Report

Agency				
Request Recd.				
Date Fwd.	1	CC. AAG, Criminal Division,		
How Fwd.	Organized Crime and Racketeering Section, Room 2524			
By	55 SEP 8 1967	[redacted]		

Notations

b7C b7C

[redacted]

NY 92-649

ADMINISTRATIVE:

By referenced report this matter was placed in a P* status and is activated at this time for submission of a current report. Any significant activity of this subject will be promptly brought to the Bureau's attention.

[redacted] b2, b7D

INFORMANTS:

Contacting Agent

[redacted] b2, b7D

[redacted] b7C

LEADS:

NEW YORK

AT NEW YORK, NEW YORK. 1. Will ascertain subject's current activities [redacted] b2, b7D

NY 92-649

LEADS (CONT'D)

2. Will discuss COSTELLO's involvement in the [redacted] with AUSA SAMUEL M. EISENSTAT, SDNY.

b7D

C*
(COVER PAGE)

FD-[illegible]4 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

b7C

Report of: [redacted] Office: New York, New York
Date: AUG 21 1967

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: Subject resides 115 Central Park West, NYC, and does not have regular employment commitment. [redacted] No indication subject has any patent connection with the Italian criminal organization.

b7D

- P -

DETAILS:

A. PERSONAL HISTORY - BACKGROUND

1. Residence and Employment

b7C, D

[redacted] advised Special Agent COSTELLO continues to reside here with his wife. He has no steady employment as such, apparently is one of considerable financial means and comes and goes at irregular times. There is no set pattern of behavior. [redacted] The subject still owns a country home in Sands Point, Long Island. [redacted] He is apparently enjoying good health.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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Section 552		Section 552a
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92-2869-112 page 2

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FBI/DOJ

[redacted]

b2;
b7C;
D;

[redacted]

During the past six month period COSTELLO has been observed by Special Agent [redacted] at varying times during the day and evening hours. He continues to frequent the better restaurants including the Delmonico on Park Avenue and Longchamps on Madison Avenue. He is often in the company of his wife. He has not been seen in the company of any personalities known to be identified with the Italian criminal organization. His evenings are spent largely at home in his apartment on Central Park West and weekends are spent at Sands Point on Long Island.

b7C

[redacted]

b2;
b7D

FBI-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

AUG 21 1967

In Reply, Please Refer to
File No. Bufile 92-2869
NYfile 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4-750 (Rev. 12-14-88)

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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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FBI/DOJ

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	JAN 11 1968	8/30-12/14/67

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPED

CHARACTER OF CASE

AR

b7C

REFERENCES:

b7C

b7C Report of SA [redacted] New York, 8/21/67.
New York letter to Albany, 11/24/67.

-P*-

b7C

ADMINISTRATIVE:

b7C, D, b2, L [redacted]

Observation of COSTELLO during the pertinent period was made by SA [redacted] and the writer. b7C

ACCOMPLISHMENTS CLAIMED None						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR [X] YES [ ] NO PENDING PROSECUTION OVER SIX MONTHS [ ] YES [X] NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE:

b7C

3 - Bureau (92-2869)
2 - USA, SDNY
3 - New York (92-649)
(1 - 92-4118)

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92-2869-113 REC-69

EX 101

1 JAN 12 1968

Dissemination Record of Attached Report				
Agency				
Request Recd.	1 CC. AAG, Criminal Division, Organized Crime and Racketeering Section, Room 2324.			
Date Fwd.				
How Fwd.				
By				

Notations

[redacted] b7C

66 JAN 26 1968
F 11

ADMINISTRATIVE (cont'd)

This investigation has received sustained attention since it was last reported upon.

b7C, b7D [redacted]

INFORMANTS:

Identity of Source	Contacting Agent
b7C, b7D [redacted]	b7C [redacted]

LEAD

NEW YORK

AT NEW YORK, NEW YORK. Will, six months hence, submit report to Bureau bringing COSTELLO's activities up-to-date, with particular reference to information secured from [redacted]

b7C, b7D

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] b7C Office: New York, New York
Date: 1/11/68

Field Office File #: 92-649 Bureau File #: 92-2869

Title:
FRANK COSTELLO

Character:
ANTI-RACKETEERING

Synopsis:

COSTELLO continues to reside at 115 Central Park W., Manhattan; does not have regular employment [redacted] b7C, D No present evidence that COSTELLO has resumed any LCN activity.

-P*-

DETAILS:

A. PERSONAL HISTORY

1. Residence

COSTELLO continues to reside at 115 Central Park West, Manhattan, [redacted] advised SA [redacted] COSTELLO has no employment commitment as such and his business interests are not known [redacted] b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

2. Health

Observation of the subject in recent weeks by Special Agents of the New York Office established that COSTELLO enjoys reasonably good health and gets around with comparative ease to dining haunts and places he is long known to patronize. This travel is accomplished by taxicab [redacted] b7D

B. MISCELLANEOUS

By handprinted letter, undated and with the envelope bearing the cancellation date of September 8, 1967, the following anonymous information was received in the New York Office of the Federal Bureau of Investigation (FBI). The letter read as follows:

b7C

[redacted]

The fo[redacted] was printed in ink on ruled eight and a half inch [redacted] ruled paper.

[redacted]

b7
b7C
b7D

b7C, D,

[redacted]

In its edition of May 3, 1957, the New York "Post", a daily metropolitan publication, reported that on the night of May 2, COSTELLO and his wife were entertained at the plush L'Aiglon Restaurant in Manhattan by one AL MANIANCI and his wife. MANIANCI was described as being prominent in the juke box business. Others in the party included GENEROSO POPE, JR., owner of the New York "Enquirer", and PHILIP KENNEDY, both long-time COSTELLO friends. Upon his return to his apartment address at 115 Central Park West, New York City, after this particular evening at L'Aiglon and Monsignori Restaurants, COSTELLO was shot in the head by an assailant and narrowly missed assassination.

[redacted]

b7C, D,

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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92-2869-113 pages 4 through 8

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FBI/DOJ

FD-322 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
New York, New York
January 11, 1968

In Reply, Please Refer to
File No. Bufile 92-2869
NYfile 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York. b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	8/8/68	1/15 - 8/5/68

TITLE OF CASE

FRANK COSTELLO aka

[redacted] 67C

REPORT MADE BY [redacted] 67C TYPED BY [redacted]

CHARACTER OF CASE

AR

REFERENCES: Atlanta letter to New York 6/25/68
Report of SA [redacted] 67C New York, 1/11/68.

-P*-

[redacted] 67C

ADMINISTRATIVE:

By referenced report this matter was placed in a P* status. This report is designed to bring subject's activities up to date. Because of COSTELLO's former stature and the influence he is believed to exert in racketeering circles, this matter is being returned to P*.

ACCOMPLISHMENTS CLAIMED None						ACQUITTALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR [X] YES [ ] NO PENDING PROSECUTION OVER SIX MONTHS [ ] YES [X] NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: [redacted]

(3) - Bureau (92-2869) 67C
2 - USA, SDNY
3 - New York (92-649)
(1 92-4118)

DO NOT WRITE IN SPACES BELOW

92- 2869- 114

EX-100

REC-5

25 AUG 9 1968

Dissemination Record of Attached Report				
Agency				
Request Recd.		1 CC AAG, Criminal Division.		
Date Fwd.		Organized Crime and Racketeering		
How Fwd.		Section, Room 2554		
By	143			

Notations [redacted] 67C

56 AUG 29 1968

Agents who have engaged in making observations of the subject are [redacted] and the writer. b7C

INFORMANTS:

Identity of Source	Contacting Agent
[redacted]	[redacted]

b7A, b7C, D

b7C

LEAD

NEW YORK

At New York, New York

Will, six months from date, provide Bureau with report bringing subject's activities up to date.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] b7C
Date: 8/8/68

Office: New York, New York

Field Office File #: 92-649

Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis:

COSTELLO continues to reside at 115 Central Park West, NYC and to maintain summer residence at 5 Barkers Point Rd., Sands Point, Long Island. No significant information developed through informants concerning subject. COSTELLO observed in attendance at obsequies for FRANK ERICKSON, late racketeer, held 3/6/68.

-P*-

DETAILS:

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

b7, b7C, D

A. PERSONAL HISTORY

1. Residence and Employment

[redacted]

2. Health

Regular observation of COSTELLO by Special Agents of the New York Office indicates that the subject does not appear to be restricted in his day-to-day activities because of any physical ailments. He appears to be under no particular pressure and leads a leisure existence.

B. MISCELLANEOUS

[redacted]

b2, b7C, D

b2, b7C, D

[redacted]

On March 6, 1968 the funeral for FRANK ERICKSON, long-time racketeer and friend of COSTELLO, was held at the Frank E. Campbell Funeral Home, Madison Avenue and East 81st Street, New York City. Following obsequies COSTELLO was observed to depart the funeral home in the company of GILBERT 'GIL' BECKLEY, a well known gambler of international stature. They left the area together by cab.

b7D

[redacted]

On May 7, 1968 SA [redacted] checked records of the County Clerk, Nassau County, Mineola, Long Island to determine if the subject has a patent interest in this property. The record revealed no such interest.

b2C

[redacted]

b2, b7C, D

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

August 8, 1968.

In Reply, Please Refer to File No.

Bufile 92-2869
NYfile 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York.

b7C

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	JUL 8 1969	3/10/69-6/23/69

TITLE OF CASE

FRANK COSTELLO, aka

REPORT MADE BY [redacted] b7C

TYPED

CHARACTER OF CASE

AR

b7C [redacted]

REFERENCES:

Report of SA [redacted] New York, 8/8/68. b7C

[redacted] b7D

-P*-

ADMINISTRATIVE:

This matter is retained in a P* status because of the influence COSTELLO appears to continue to have in LCN circles.

[redacted] b7C

ACCOMPLISHMENTS CLAIMED ☒ NONE						ACQUIT-TALS
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	

CASE HAS BEEN:

PENDING OVER ONE YEAR ☒ YES ☐ NO

PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☒ NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

b7C

DO NOT WRITE IN SPACES BELOW

92-2869-115

REC-3

5 JUL 9 1969

EX-10

COPIES MADE:

(3) Bureau (92-2869)
2-USA, SDNY
3-New York (92-649)

1-1539

Dissemination Record of Attached Report				
Agency				
Request Recd.				
Date Fwd.	CC: AAG, Criminal Division, Organized Crime and Racketeering Section, Room 2529			
How Fwd.				
By	94			

Notations [redacted] b7C

53 AUG 12 1969

COVER PAGE

GPO : 1968 O - 299-885

INFORMANTS:

Identity	Contacting Agent
[redacted]	[redacted]

b7A; b7C; b7D

LEAD:

NEW YORK

AT NEW YORK, NEW YORK. Will report upon subject's activities six months from the date of this report.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2-USA, SDNY

Report of: [redacted] b7C Office: New York, New York

Date: JUL 8 1969

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: Subject resides 115 Central Park West, NYC, and continues to retain summer home in Sands Point, Long Island, NY. [redacted] b7D

-P*-

DETAILS:

A. PERSONAL HISTORY

1. Residence and Employment

[redacted] b7; b7C, D

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

b2
b7C
D

[redacted]

As previously reported, COSTELLO characterizes himself as a gambler with income exclusively from his gambling activities in his Federal tax returns.

[redacted]

B. ASSOCIATES

b2,
b7C,
b7D

[redacted]

C. MISCELLANEOUS

[redacted]

[redacted]

On the occasions when COSTELLO has been observed during the past six month period, he has made no visible contact with any of the known LCN membership. He continues to frequent the better bars and restaurants in Manhattan and his living habits are reserved and discreet.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

In Reply, Please Refer to File No.

Bufile 92-2869
NYfile 92-649

JUL 8 1969

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above, at New York, New York.

b7c

All sources (except any listed below) whose identities are concealed in referenced communication have furnished reliable information in the past.

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FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	MAR 5 1970	12/10/69-2/19/70

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] b7c [redacted] TYPED

CHARACTER OF CASE

AR

REFERENCE

Report of SA [redacted] New York, 7/8/69.

b7c - P* - b7c

67C

ADMINISTRATIVE

This matter is being retained in a P* status because of the Bureau's interest in this subject, a notorious and influential racketeer with broad connections in "La Cosa Nostra" (LCN).

62
67D [redacted]

ACCOMPLISHMENTS CLAIMED						ACQUITTALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR [X] YES [ ] NO
	[redacted]					X	PENDING PROSECUTION OVER SIX MONTHS [ ] YES [X] NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: [redacted] b7c

(8) - Bureau (92-2869)
2 - USA, SDNY
3 - New York (92-649)

DO NOT WRITE IN SPACES BELOW

92-2869-116

REC-

16 MAR 6 1970

Dissemination Record of Attached Report			
Agency	1	CC. AAG, Criminal Division,	
Request Recd.		Organized Crime and Racketeering	
Date Fwd.		Section, Room 2744	
How Fwd.			
By			

Notations [redacted] b7c

5 7 MAR 17 1970

- A -
COVER PAGE

GPO : 1968 O - 299-885

4-750 (Rev. 12-14-88)

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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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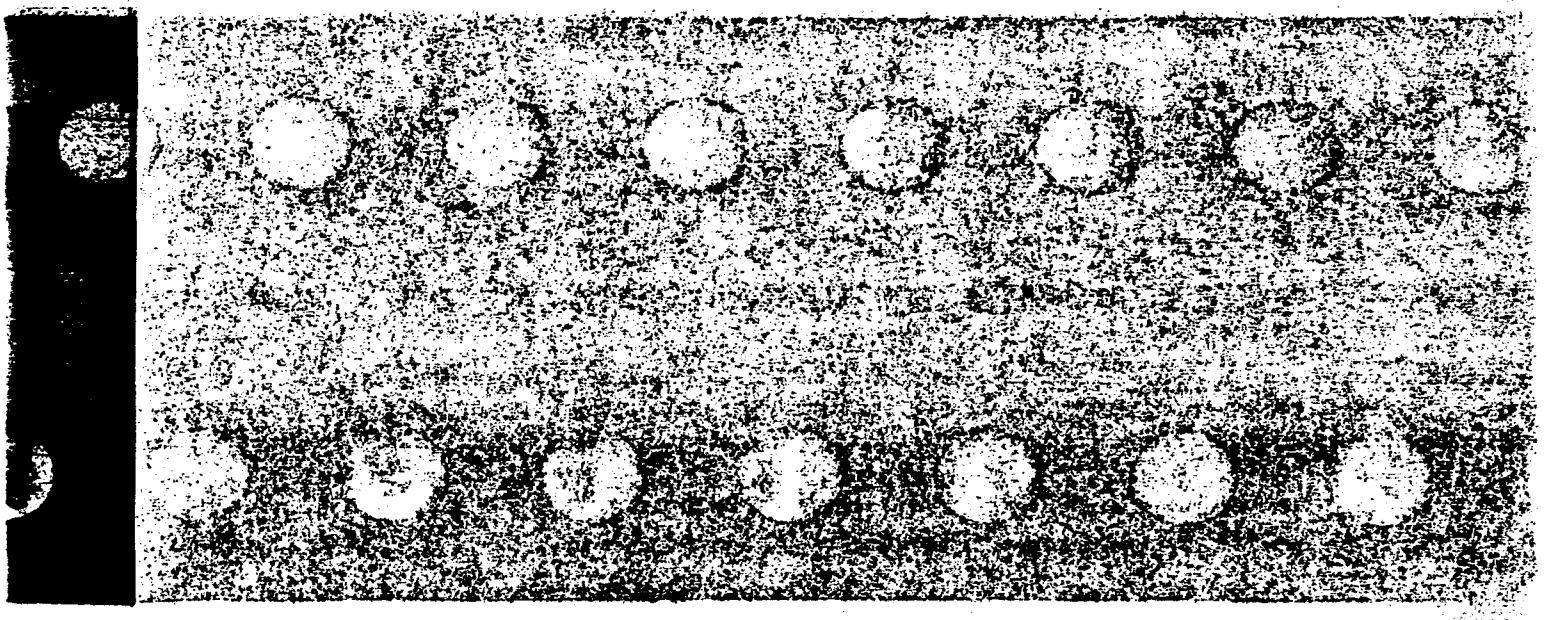
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X FOR THIS PAGE X
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FBI/DOJ

LEAD

NEW YORK

AT NEW YORK, NEW YORK. Will report upon COSTELLO six months hence, bringing his activities up to date.



FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 2 - USA, SDNY

Report of: [redacted] Office: New York, New York

Date: MAR 5 1970

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: COSTELLO and wife continue to reside 115 Central Park West, NYC, and maintain summer home in Sands Point, Long Island. [redacted] b7D No known patent connection with "La Cosa Nostra" (LCN) membership developed.

- P* -

DETAILS

A. PERSONAL HISTORY

1. Residence and Employment

On February 16, 1970, COSTELLO was observed by SA [redacted] exiting from his residence, 115 Central Park West, Manhattan, [redacted] COSTELLO has no obvious employment but apparently he has business involvements which require his day-to-day attention inasmuch as he leaves his apartment practically every morning and returns at varying hours late in the day or evening. He entertains very infrequently at his apartment and has few visitors, old and trusted friends.

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4-750 (Rev. 12-14-88)

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☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
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92-2869- 116 pages 2 through 5

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X FOR THIS PAGE X
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FBI/DOJ

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

In Reply, Please Refer to File No.

MAR 5 1970

Title Frank Costello

Character Anti-Racketeering

Reference is made to report of Special Agent [redacted] dated and captioned as above.

b7c

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FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	9/8/70	3/5/70 - 9/8/70

TITLE OF CASE

FRANK COSTELLO aka

[redacted] b7C

REPORT MADE BY [redacted] TYPED

CHARACTER OF CASE

AR

b7C

REFERENCE: b7C

Report of SA [redacted] dated 3/5/70 at New York.
Buffalo letter to New York, dated 5/18/70 (IO).
St. Louis letter to New York, 7/9/70 (IO).

-P*-

b7C [redacted]

ADMINISTRATIVE:

This matter is being retained in a P* status because of the Bureau's interest in this subject, a notorious and influential racketeer with broad connections in "La Cosa Nostra" (LCN).

The following is reported here in order to insure protection of the informant.

ACCOMPLISHMENTS CLAIMED ☒ NONE						ACQUIT-TALS
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	

CASE HAS BEEN:
PENDING OVER ONE YEAR ☒ YES ☐ NO
PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☒ NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE [redacted] b7C

(3) Bureau (92-2869)
1-USA, SDNY
1-Strike Force, SDNY
3-New York (92-649)
(1-92-657 Sub I)

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92-2869-117 REC-3

22 SEP 11 1970 EX-11

1cc SDNY 1537

Dissemination Record of Attached Report				
Agency				
Request Recd.		CC. AAG, Criminal Division, Organized Crime and Racketeering		
Date Fwd.				9/11/70
How Fwd.				
By	[redacted]			

Notations [redacted] b7C

54 SEP 18 1970 b7C

COVER PAGE

GPO : 1968 O - 299-885

4-750 (Rev. 12-14-88)

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☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☑ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
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92-2869-117 pg. B

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FBI/DOJ

NY-92-649

INFORMANTS:

Identity of Source	Contacting Agent
[redacted]	

LEAD:

b2, b7C, D

NEW YORK

AT NEW YORK, NEW YORK. Will report upon subject six months hence bringing his activities up-to-date.

[redacted]

-C*-

COVER PAGE

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1-USA, SDNY
1-Strike Force, SDNY

Report of: [redacted] Office: New York, New York

Date: 9/8/70

Field Office File #: 92-649 Bureau File #: 92-2869

Title: FRANK COSTELLO

Character: ANTI-RACKETEERING

Synopsis: Subject retired and resides 115 Central Park West New York City, Apt 18F. [redacted] Subject in May, 1970, subpoenaed before New York County Grand Jury investigating gambling in the metropoli area.

-P*-

DETAILS:

A. Personal History

[redacted] advised subject still resides in apartment 18F at above.

New York Times late city edition dated May 16, 1970, on page 18 contained an article "FRANK COSTELLO Testifies Here; Gambling Reported to Be Topic". COSTELLO after leaving New York County Grand Jury was quoted as saying to reporters "I am retired".

B. Associates

[redacted]

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C. Miscellaneous

New York Times late city edition dated May 16, 1970, on page 18 contained an article "FRANK COSTELLO Testifies Here; Gambling Reported to Be Topic". Article in substance dealt with subject being subpoenaed before New York County Grand Jury investigating gambling in the metropolitan area.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York
September 8, 1970

In Reply, Please Refer to
File No. Bufile 92-2869
NYfile 92-649

Title Frank Costello

Character Anti-Racketeering

Reference is made to report of Special Agent [redacted] dated and captioned as above at New York.

b7c

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FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	4/28/71	9/8/70 - 4/22/71

TITLE OF CASE

FRANK COSTELLO aka

REPORT MADE BY [redacted] TYPE [redacted]

CHARACTER OF CASE

b7C

AR

REFERENCE

[redacted] Rep of SA [redacted] dated 9/8/70, at NY

b7C

- p* -

b7C

ADMINISTRATIVE

This matter is being retained in a pending inactive status because of the Bureau's interest in this subject, a notorious and influential racketeer with broad connections in "La Cosa Nostra" (LCN).

b7C [redacted]

ACCOMPLISHMENTS CLAIMED ☒ NONE						ACQUITTALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR ☒ YES ☐ NO PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☒ NO

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: [redacted] b7C

(3) - Bureau (92-2869)
1 - USA, SDNY
1 - STRIKE FORCE, SDNY
3 - New York (92-649)
(1 - 92-657 Sub 1)

DO NOT WRITE IN SPACES BELOW

92-2869-118

REC 16 EX-11

APR 30 1971

Dissemination Record of Attached Report				
Agency				
Request Recd.				
Date Fwd.	5/11/71			
How Fwd.	CC, AAG, Criminal Division, Organized Crime & Racketeering Section			
By	Room 2713			

Notations [redacted] b7C

54 MAY 26 1971

COVER PAGE

U.S. GOVERNMENT PRINTING OFFICE : 1970 O—375-139

NY 92-649

INFORMANTS

Identity of Source	Contacting Agent
[redacted] b7D	b7C [redacted]

LEAD

NEW YORK

AT NEW YORK, NEW YORK. Will report upon subject in six months bringing his activities up to date.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, SDNY
1 - STRIKE FORCE, SDNY

Report of: [redacted] b7C Office: New York, New York

Date: 4/28/71

Field Office File #: 92-649 Bureau File #: 92-2869

Title:

FRANK COSTELLO

Character:

ANTI RACKETEERING

Synopsis:

Subject retired and continues to reside at 115 Central Park West, NYC, apt. 18E. [redacted]

- P* - b7D

DETAILS

[redacted]

b8
b7C,D

[redacted]

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Periodic checks made during the period of this report revealed that subject continues to reside at 115 Central Park West, New York City, apartment 18F. Nothing of an unusual nature was observed.

The "New York Times" late city edition, dated November 21, 1970, on Page 21, contained an article, "Costello Reported Back in Crime Role". The article stated in effect, that COSTELLO is now an authority figure who advises on plans and mediates in disputes and is not involved in the day-to-day operation of the rackets.

FD-323 (Rev. 11-29-61)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New York, New York
April 28, 1971

Title Frank Costello also known as

Character Anti Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above, at New York. b7C

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FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW YORK	NEW YORK	OCT 19 1971	4/29/71-10/12/71

TITLE OF CASE

FRANK COSTELLO aka [redacted] 67C

[redacted] 67C

REPORT MADE BY [redacted] TYP

CHARACTER OF CASE

AR

REFERENCE:

Report of SA [redacted] dated 4/28/71, at NY.

67C -P*-

ADMINISTRATIVE:

The period of this report is protracted as this case had been carried in a P* status previously.

This matter is being retained in a P* status due to subject's advanced age and apparent lack of criminal activity.

[redacted] 67C

ACCOMPLISHMENTS CLAIMED ☐ NONE						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR ☒ YES ☐
							PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☒

APPROVED [redacted] SPECIAL AGENT IN CHARGE

COPIES MADE: 67C

(3)- Bureau (92-2869)
1- USA, SDNY
1- Strike Force, SDNY
3- New York (92-649)
(1- 92-658 SUB A)

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92-2869-119 REC-48

EX-10[illegible]

OCT 21 1971

Dissemination Record of Attached Report				
Agency				
Request Recd.				
Date Fwd.				
How Fwd.				
By				

CC, AAG, Criminal Division, Organized Crime & Racketeering Section Room [illegible]

Notations

[redacted] 67C

51 NOV 12 1971

-A-
COVER PAGE

★ GPO : 1968 O - 299-885

4-750 (Rev. 12-14-88)

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FBI/DOJ

NY 92-649

INFORMANTS:

Identity of Source	Contacted By
[redacted]	

b2, b7C, D

LEADS:

NEW YORK

AT NEW YORK, NEW YORK. Will after six months, submit report bringing subject's activities up to date.

FD-323 (Rev. 8-1-72)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
New York, New York
OCT 16 '72

In Reply, Please Refer to File No.
NYfile 92-6499
Bufile 92-2869

Title Frank Costello

Character Anti-Racketeering

Reference is made to the report of Special Agent [redacted] dated and captioned as above at New York, New York.

b7C

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FEDERAL BUREAU OF INVESTIGATION

FREEDOM OF INFORMATION/PRIVACY ACTS SECTION

SUBJECT: FRANK COSTELLO

FILE NUMBER: 92-2869 SUB A

b7c

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C.Sulli
Tele. Room
Mr. Holloman
Miss Gandy

Daily CLOSEUP

Frank Costello

By ROBERT RICE

Frank Costello, at 115 Central Park West and Sands Point, L. I., noted business executive and long-time friend and associate of many of the most widely known figures of his time, is due to surrender today in Federal Court to resume serving a five-year sentence for income-tax evasion. His age is 67.

Regarded as one of the nation's leading authorities on the protection of small businesses, the clandestine importation of contraband goods and many forms of gambling, Mr. Costello appeared in prison only infrequently during his long career, preferring to pursue his varied and lucrative interests in the barber shop of the Men's Bar of the Waldorf-Astoria Hotel, in Toots Shor's restaurant, or on any one of a number of fashionable golf courses in the metropolitan area.

Mr. Costello devoted almost as much time to philanthropy as to business, a fact he had successfully concealed until nine years ago, when a report that he had organized a dinner in behalf of the Salvation Army at the Copacabana night club found its way into the press.

The gamut of the business and political leaders who had attended the dinner at Mr. Costello's invitation were distressed when news of the event was made public. [illegible]



b7c

CLIPPING FROM TH

N.Y. POST

EDITION 7th BLUE FINAL

DATED 21 OCT 1958

PAGE 34

FORWARDED BY NY DIVISI

RE: FRANK COSTELLO
HOODLUM PROGRAM
ANTI-RACKETEERING

BUFILE 92-

92-2867

NOT RECORDED
NOV 14 1958

-A

REC- 50

67 NOV 19 1958

EX 101

[redacted] Costello was always fastidiously groomed. He favored dark blue suits with pin or chalk stripes, and discarded 25 or 30 of them at the end of each season. He wore white shirts. His shoes were polished and his nails manicured daily and often bestowed $5 tips on the technicians who performed those services for him. His favorite accessories were platinum cufflinks, hand-painted four-in-hand neckties and a platinum money clip for the several thousand dollars in bills of large denominations that he customarily carried with him.

On one occasion, with unwonted absent-mindedness, he left $27,200 in cash on the seat of a taxicab in which he had been riding, and his efforts to recover the money from the police lost property bureau provided him with material for one of his most amusing after-dinner anecdotes.

* * *

The story of Mr. Costello's rise, from the squalor of the tiny Calabrian village in which he was born and of the East Harlem tenement into which his family moved when he was 4, to wealth, renown and intimacy with the great, is one which, if not precisely in the vein of Horatio Alger, is nevertheless unmistakably American.

A man who often drew upon the colorful locutions of his youth, he once explained East [redacted] where he became associated with a widely respected local organization called the Hudson Dusters. In 1908 he suffered a youthful mishap which continued to be a topic of good-natured chaffing as he went through life between him and his many acquaintance in the police force: he was arrested on a charge, soon dismissed, of assault and robbery.

Rather more serious, in his view, was a second arrest, in 1915, for carrying a pistol concealed on his person. For that indiscretion he was sentenced to a year in the penitentiary. Never one to repeat the same mistake, Mr. Costello avoided the personal use of firearms, as he [redacted] too dangerous from that time on. He [redacted] since he was above all a man of broad [redacted] in action objected to their employ[redacted] by his subordinates.

[redacted] emerging from prison at World War I's end, [redacted] Costello was among the first to [redacted] the commercial opportunities afforded young men by the passage of the 18th Amendment to the Constitution and the so-called Volstead Act, entering the business of importing whisky and spirits from Canada in speedboats equipped with armor plate, he soon was able to boast of an income estimated at $5,000 a week.

Mr. Costello's career from then on has been chronicled too often to require more than a cursory recapitulation: his ventures met with uninterrupted success and by the early 1930s he was reputed to be in receipt of an annual income approaching $4,000,000, and was generally referred to by his associates either as "The Prime Minister" or as "the man you gotta see."

Throughout the 1940s he devoted himself quietly to his work, resisting the importunities of those who felt that his career had been so interesting that he owed it to his country to reveal all its details. It was not until 1951 that, at the urging of Sen. Estes Kefauver, whose invitation he could scarcely have refused with grace, he permitted his hands to appear for several days before a nationwide television audience, though he soon tired of the cameras and bright lights and refused to appear before them again despite Sen. Kefauver's pressing pleas.

* * *

In recent years Mr. Costello found it necessary to curtail his activities a good deal. Although he spent 14 months during 1952 and 1953 recuperating from his television ordeal in the Milan (Mich.) Federal Correctional Institution, his health was never as good as it had been and a year and a half ago he suffered a painful accident: a bullet fired from a .38-caliber pistol wounded him in the scalp.

A modest man who shunned publicity and preferred to let his deeds speak for themselves, he had resolved as a youth that he would avoid boasting about himself or his career. That he adhered determinedly to that early vow despite subpoenas, offers of immunity, citations for contempt and other almost irresistible blandishments, illustrated the native streak of [redacted] that was so much a part of his character and [redacted] so unreservedly admired by his business [redacted]

Mr. Costello was married in 1914 to [redacted] with [redacted] of this [redacted]

2

0-19 (Rev. 1-11-60)

Costello Ruling Is Upheld

The U. S. Court of Appeals yesterday unanimously upheld a lower court order stripping imprisoned gambler Frank Costello of his citizenship.

The decision marked another government victory in its long fight to deport the ailing 69-year-old Costello to his native Italy. The only recourse left to him is an appeal to the U.S. Supreme Court.

The Government has declared it will deport him after he completes a five-year sentence for income tax evasion.

THE COURT of Appeals upheld Federal Judge Archie O. Dawson's order of last Feb. 20 revoking Costello's citizenship on the grounds he obtained it through fraud and misrepresentation in 1925. The Government charged Costello gave his occupation as a real estate dealer when he was actually engaged in bootlegging.

In a 12-page opinion written by Judge Calvert Magruder and concurred in by Judges Leonard P. Moore and Henry J. Friendly, the Appeals Court said:

"We think it obvious that a worldly wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but 'dust in the eyes' to conceal his real occupation."

IN 1956, an attempt to denaturalize Costello failed when Federal Judge Edmund L. Palmieri dismissed the government's case on the ground it was "permeated with the fruits of illegal wiretaps."

Costello is now confined to the Federal Penitentiary in Atlanta, Ga. He was convicted in 1954 of evading a total of $238,537 in Federal income taxes in 1945 and 1946.

After various appeals had failed, he went to jail on May 14, 1956. He was released on bail on March 31, 1957, pending appeal to the U. S. Supreme Court. After that court refused to review the case, he was returned to jail Oct. 21 [illegible] with time off for good [illegible]

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File 92-2869

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror 4
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date FEB 18 1960

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0-19 (Rev. 1-11-60)

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Costello Loses His Appeal, Citizenship Loss Is Upheld

Gambler Frank Costello yesterday lost his appeal from a Federal District Court order stripping him of American citizenship and paving the way for his deportation. The United States Court of Appeals upheld unanimously the ruling of the lower court.

The government charged that Costello, now serving five years for evading $26,000 in income taxes, fraudulently obtained citizenship almost thirty-five years ago by giving his occupation as "real estate" when he was in fact a bootlegger.

Opinion Is Quoted

Yesterday's opinion, written by Judge Calvert Magruder and concurred in by Judges Leonard P. Moore and Henry J. Friendly said:

"We think it obvious that a worldly wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but 'dust in the eyes' to conceal his real occupation. . . . The District Court believed that Costello was guilty of this fraud, and we certainly cannot say that the finding to this effect was 'clearly erroneous.'"

Costello is confined in the Federal penitentiary at Atlanta. There was no immediate word whether his lawyer, Edward Bennett Williams, of Washington, would take the case to the Supreme Court.

If no further appeal is taken or if the Supreme Court upholds yesterday's ruling, the government will deport Costello to his native Italy at the completion of his prison term. Italian authorities are reported "almost certain" to accept him to maintain friendly relations with this country, but they will do so "unhappily."

File 92-2869

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune 12
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date FEB 18 1960

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Walter Winchell of New York

Interview with a Mr. Costello

Frank Costello, star witness at the televised Kefauver Hearings (probing crime) and before several other Federal investigating committees, was strolling along 5th Ave. when we latched onto his elbow.

"You older than I am?" we asked, "or am I older than you?"

"Got you beat a year. I was 66 not long ago," said the dapper-dandy, who paid his Debt to Society over a difference of opinion with Internal Revenue not long ago.

He was sentenced to Atlanta Federal Prison for 5 years over $27,000 in tax evasion.

"Imagine," said Costello, "$27,000! I used to bet that on a horse!"

We hoped he would mention the mysterious disappearance of Tony Bender, the shadowy figure, who according to some newspapers might have been one of the persons behind the 1957 attempted assassination of "Mr. C.", as he is often called by Underworld Nobility.

"You once gave me the only interview you gave any newsman for International News Service. In 1948, right?"

"Right," he said, "are you trying to get one now?"

"I'm a reporter."

"I maybe met Bender casually only twice in my whole 66 years. Last time in the early 50s."

"I hear you have an offer for your life story—$100,000 in advance. It would be a heckuva book. Why don't you let me do it with you? You know: As Told To."

"It would have to be a flop," he shrugged. "What could I write? That I am married to the same girl nearly 40 years? That my friends include Cardinals? And lots of other respected people? Yes, I have been asked to do a book for more than what you said."

"How much more?"

"Quarter of a million. It would be a dull book. Who would be interested in reading that my worst sin was being a gambler? If gambling is a sin—then everybody's guilty. When Colonel Bradley ran his swanky joint in Palm Beach nobody called him any gambler. He walked with Kings and Queens and other royalty and judges and our best people. You never called Bradley a gambler when you went to his place."

"You are tempting me, Frank," we said, "I am going to give the Mirror this interview!"

"What interview? I thought we are just having a talk."

"Some readers might be interested in your turning down $250,000 to do a book. You could tell a lot of inside stuff about all the times you were subpena'd by government committees."

"I was never subpena'd. I always told a committee I'd be a witness! If I read or heard that I was going to be subpenaed I phoned them and said I will be there, I don't need any subpena."

"Frank, have any lawmen ever questioned you about Bender?"

"No."

"The New York papers implied Bender was a friend of yours."

"I told you I met him casually twice in my whole life."

Some papers keep reporting that Bender's men tried to kill you that time at The Majestic Apartments.

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Mohr
Callahan
Conrad
DeLoach
Evans
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file

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
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The Wall Street Journal
The National Observer
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"I read that, too). The guy they arrested for that enemy was indicted but they acquitted him."

"Why do you think?"

"I couldn't identify him as the man. My back was turned at the time. I got it in the side of my head."

"When you do a book," suggested Costello, "tell them what I couldn't put in any book—that every worthy cause got my help. What about the nearly $300,000 I helped your Runyon Cancer Fund get? (Editor's Note: When the Fund was a baby—an Italian-American Welfare group liquidated holdings which included valuable property in Illinois. They wanted to give it to charity. I heard about it and persuaded Mr. C. to use his influence and get them to give it all to the Runyon Fund. The sum was $280,000. His instructions to those Chicago friends: "Give the money to fight Public Enemy Number One—cancer!")

"The newspapers are also saying Bender may have gone into hiding to avoid testifying in a Federal case involving the mobs," we persisted, "but I guess they left him someplace." (We once heard a long since departed gangster threaten Sherman Billingsley, proprietor of the Stork Club: "I'll leave you someplace!")

"Do you think Bender's hiding out or bye-bye?"

"If I knew anything about him," Mr. Costello frowned, "I would tell you. But I told you twice already I did not know him!"

"I hear your lawyer (Ed Bennett Williams) is doing a book. I'll bet you gave him plenty about your naughty history."

"I didn't give him anything he didn't know about me. But if you wanna scoop you should predict it'll be The Book of the Year."

"Frank," we said, "I'm not kidding about doing your book with or for you. I need the money, no fooling. They took 91 percent of my loot for many, many years."

"No partners," he rejected. "Don't forget, I just paid Mr. Whiskers (Uncle Sam) 100 percent for nearly 5 years."

"I'm going to jot all this down for my editors, Frank."

"Jot it down. Just don't put words in my mouth I didn't say. I don't need trouble."

The Broadway Crowd: "They" keep guessing the Yves Montands (Simone Signoret) will bury it. "It's only a matter of time" ...Winsome Courtney (ex-wife of movie star David Bryan) weds Elliott Taylor, Exec-Veep of Pacific Finance Co. of Calif. May 5. The bride-to-be is a Palm Springs, Cal. favorite...Bobby Darin told the Copa that when he opens there he must get a ground floor room. The showfolk-passengers in the recent Copa-Hotel 14 elevator dive have lodged hefty lawsuits against that inn...Big shakeup in the works backstage at Radio City Music Hall. The Corps De Ballet, specifically. Margaret Sande (long there) will be replaced by Mark Platt...Carlos Ruiz (Basin St. Maitre d') and high-fashion model Joy Tedesco went and skoodit...Z-Z reportedly had a near-tantrum at a B'way film premiere when she and her beau couldn't get pews in the orchestra. Hadda sit in the un-chic balcony...More non-show-biz mags are front-covering movie celebs. Circulation, you know...Grace Kelly's mother got $5 an hour as a cover-girl in 1919...When Liz Taylor was 8, her father wrote in Parents mag: "We believe children should be encouraged to develope on their natural lines."

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Clayton
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Mr. Holloman
Miss Gandy

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Of 1

Costello Scores Again

Gangster Frank Costello has won (again) a new lease on the American citizenship his hoodlum record belies.

On a "technicality," as the news reports described it, the Supreme Court, no less, dismissed a suit to take away his naturalization papers—a step toward deporting him. And a pretty technical "technicality" at that.

When the government goes to court to lift a man's citizenship, it is required to file an "affidavit of good cause." That is, a bill of particulars. Two Appellate Courts had differed as to whether this affidavit had to be filed simultaneously with the petition or merely soon thereafter. The Supreme Court said simultaneously.

So the Justice Department, which for five years has been battling technicalities raised by Costello's lawyers, now must start all over. Attorney General Rogers says he will.

Don't give up, Mr. Rogers.

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N.Y. N.Y. WORLD TELEGRAM & SUN
EDITION NIGHT
DATED 9 APR 1958
PAGE 30
FORWARDED BY NY DIVISION
RE: FRANK COSTELLO
HOODLUM PROGRAM
ANTI-RACKETEERING

BUFILE 92-

EDITORIAL

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Costello Pal Got Title 1 Deal

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Top Politician Paved the Way

By WILLIAM HADDAD, JOSEPH KAHN and IRVING LIEBERMAN

A man described in official Senate proceedings as a former partner of Frank Costello and an associate of other mobsters was secretly awarded a Title 1 sponsorship, a Post investigation showed today.

The sponsor's counsel, John J. Bennett, drew up the application. Bennett is a former State Attorney General, former Democratic candidate for Governor and former member of the Slum Clearance Committee.

The man to whom the sponsorship for the proposed mid-Harlem redevelopment was awarded is Louis Pokras. Associated with him are his son Harvey and son-in-law Calvin E. Bell. They were designated sponsors in 1956 and reconfirmed a year later. Bennett was their attorney in negotiations with the committee.

They were selected without competitive bidding and without the making of a land appraisal on which the com-

CLIPPING FROM THE

N.Y. POST

EDITION 7th BLUE FINAL

DATED 6/30/59

PAGE 3

FORWARDED BY NY DIVISION

EDITOR: JAMES A. WECHSLER

RE: HOODLUM PROGRAM
ANTI-RACKETEERING

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mittee usually bases its determinations. A check of their qualifications was mysteriously dropped prior to approval.

The Slum Clearance Committee has applied to the Housing and Home Finance Agency, the federal government's Title I watchdog, for a preliminary money grant for a study of the proposed location, which is in central Harlem in the 125th St. area.

Costello told the Kefauver Crime Committee in 1951 that he was a partner of Louis Pokrass in a television equipment company. Costello said Meyer Lansky held an interest in the same company. Lansky testified that he and Joe Adonis had invested with Pokrass.

In the same year, Virgil W. Peterson, operating director of the Chicago Crime Commission, testified that in the early 30's "one of the most powerful gangs operating in New York City and the East Coast was composed of the following individuals: Frank Costello, Joe Adonis, Benjamin "Bugsy" Siegel, John Torrio . . . Dutch Goldberg, Abner "Longie" Zwillman, Meyer Lansky, Charles "Lucky" Luciano, Moe Sedgwick . . . Jack Levenson, Charles Haim and Louis Pokrass . . . Most of these activities, of course, were in the bootlegging field."

Pokrass denied to a credit check agency that Costello ever had an interest in either Consolidated Television or its successor, Tele-King. He said that George Wolf, described in crime hearings as "a trustee for Frank Costello," did own 10 per cent of Consolidated for a short time.

Pokrass' Title I designation, both in 1956 and 1957, was approved by Thomas J. Shanahan, controversial vice chairman of the Slum Clearance Committee. Shanahan is also president of the Federation Bank and Trust Co.

The bank was selected to review the sponsor's qualifications. The investigation was never completed, the Slum Clearance Committee told The Post.

Nevertheless the minutes of the Committee for March 1957 record that the Committee voted . . . to confirm original designation of the sponsors represented by Mr. Pokrass."

When Post reporters began checking . . .

dropped over the project.

Bennett, Deputy Mayor [illegible]der Dwyer, Attorney General [illegible]un- Govs. Lehman and Roosevelt and former chairman of the City Planning Commission, claimed an attorney-client relationship and refused to reveal the names of the sponsors.

The Kefauver Hearings

"I can tell you," he said, "they are fine fellows."

At the Slum Clearance Committee it took five hours to locate the names of the sponsors. At one point a Committee spokesman said:

"We may have to open up the bidding to other sponsors."

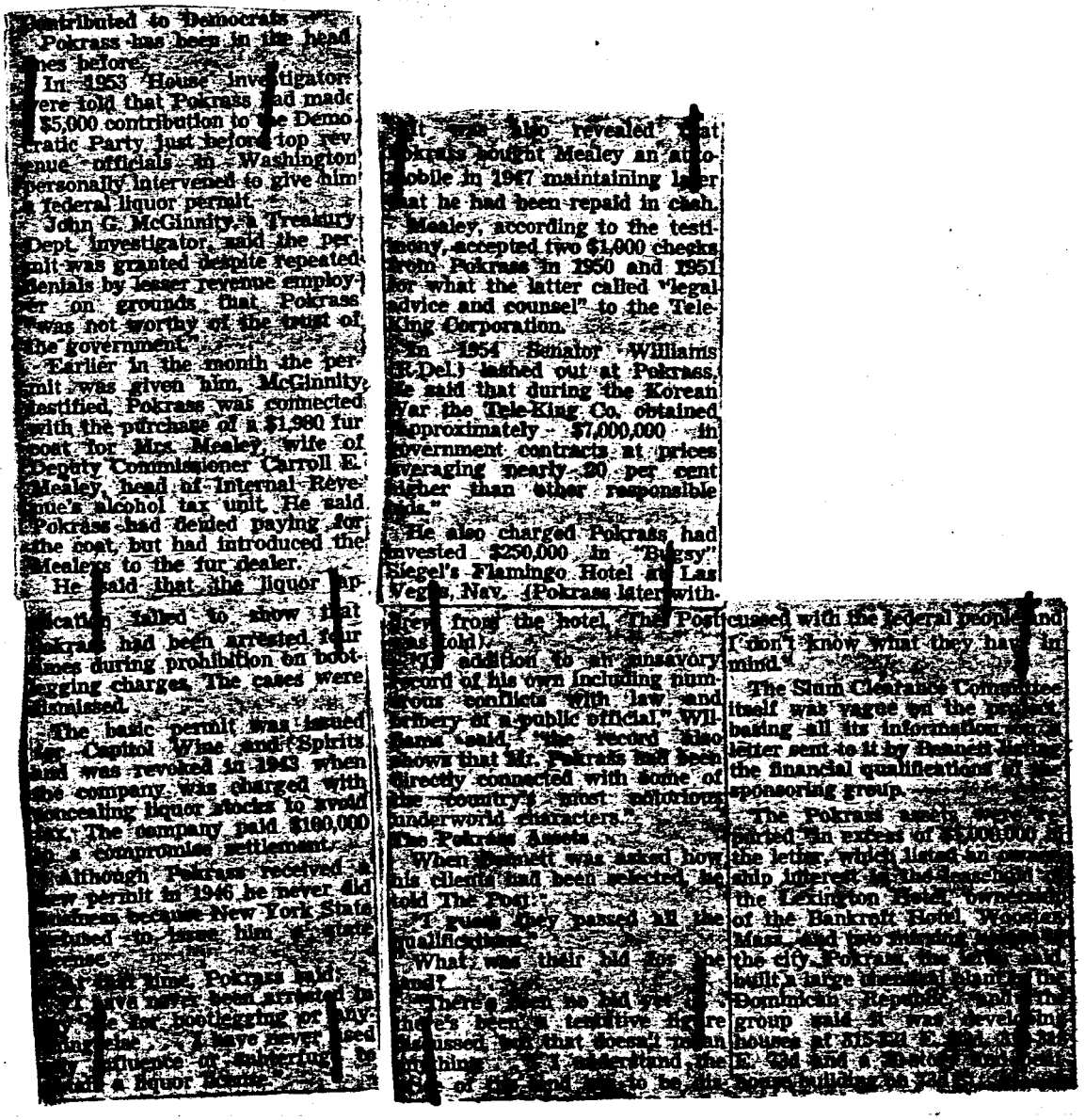
But then the facts came tumbling out.

Afterwards Shanahan was unavailable for comment and Pokrass was out of town.

Before Kefauver in 1951 one [illegible] who was asked:

Did you have [illegible]

[illegible]



Contributed to Democrats

Pokrass has been in the headlines before.

In 1953 House investigators were told that Pokrass had made a $5,000 contribution to the Democratic Party just before top revenue officials in Washington personally intervened to give him a federal liquor permit.

John G. McGinnity, a Treasury Dept. investigator, said the permit was granted despite repeated denials by lesser revenue employes on grounds that Pokrass was not worthy of the trust of the government.

Earlier in the month the permit was given him, McGinnity testified, Pokrass was connected with the purchase of a $1,980 fur coat for Mrs. Mealey, wife of Deputy Commissioner Carroll E. Mealey, head of Internal Revenue's alcohol tax unit. He said Pokrass had denied paying for the coat, but had introduced the Mealeys to the fur dealer.

He said that the liquor application failed to show that Pokrass had been arrested four times during prohibition on bootlegging charges. The cases were dismissed.

The basic permit was issued for Capitol Wine and Spirits and was revoked in 1943 when the company was charged with concealing liquor stocks to avoid tax. The company paid $100,000 in a compromise settlement.

Although Pokrass received a new permit in 1946 he never did business because New York State refused to issue him a state license.

[illegible] Pokrass said [illegible] have never been arrested [illegible] for bootlegging or have [illegible] have never used [illegible] influence in entering [illegible] liquor license.

[illegible] was also revealed that Pokrass bought Mealey an automobile in 1947 maintaining later that he had been repaid in cash.

Mealey, according to the testimony, accepted two $1,000 checks from Pokrass in 1950 and 1951 for what the latter called "legal advice and counsel" to the Tele-King Corporation.

In 1954 Senator Williams (R.Del.) lashed out at Pokrass. He said that during the Korean War the Tele-King Co. obtained approximately $7,000,000 in government contracts at prices averaging nearly 20 per cent higher than other responsible bids."

He also charged Pokrass had invested $250,000 in "Bugsy" Siegel's Flamingo Hotel at Las Vegas, Nev. (Pokrass later withdrew from the hotel, The Post was told).

"In addition to an unsavory record of his own including numerous conflicts with law and bribery of a public official," Williams said, "the record also shows that Mr. Pokrass has been directly connected with some of the country's most notorious underworld characters."

The Pokrass Assets

When Bennett was asked how his clients had been selected, he told The Post:

"I guess they passed all the qualifications."

What was their bid for the lease?

"There's [illegible] bid yet. There's been a tentative figure discussed but that doesn't mean anything. I don't understand the [illegible] or the bond [illegible] to be [illegible]

cussed with the federal people and I don't know what they have in mind."

The Slum Clearance Committee itself was vague on the project, basing all its information on a letter sent to it by Bennett listing the financial qualifications of the sponsoring group.

The Pokrass assets [illegible] totaled an excess of $3,000,000 [illegible] the letter, which listed [illegible] ship interest in the leasehold [illegible] the Lexington Hotel, ownership of the Bankcraft Hotel, Woodland, Mass., and two [illegible] in the city. Pokrass, the letter said, built a large [illegible] in the Dominican Republic and the group said it was developing houses at [illegible] E. 23d and a [illegible] E. 23d and a [illegible]